2013 Report of the Kingdom of the Netherlands, Aruba, Curaçao and St Maarten to the United Nations Committee on the Elimination of Racial Discrimination (CERD)

Contents

Other annexes:

- Annex III - LECD statistics, Cijfers in beeld 2010
- Annex IV - Letter to Parliament about Integrationpolicy 2011
- Annex V - Summary SCP Annualreport Integration 2011
- Annex VI - Poldis report 2010
- Annex VII - Poldis report 2011
- Annex VIII - Aruba, the foreignborn population – census 2010

Part I – Introduction (concl. observs. 15, 21, 22 and 23)

1. In pursuance of article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (‘the Convention’), the present report by the Kingdom of the Netherlands is submitted in accordance with the Guidelines for the CERD-specific document to be submitted by states parties under article 9, paragraph 1 of the Convention (CERD/C/2007/1 of 13 June 2008).

This, the consolidated nineteenth, twentieth and twenty-first report, covers the period from April 2010 to April 2012 and follows on from the consolidated seventeenth and eighteenth periodic report submitted to the Committee in March 2008, which covered the period from July 2002 to December 2006. The information contained in this previous report was updated to include the period from January 2007 to March 2010 for the purpose of the Committee meetings of 23 and 24 February 2010. Having considered the consolidated report, the Committee adopted Concluding Observations at its meeting of 5 March 2010.

2. This report is structured in accordance with the Committee’s Concluding Observations (CERD/C/NLD/CO/17-18) dated 25 March 2010. Supplementary information has been provided concerning developments in the period under review that relate to specific articles of the Convention. Issues dealt with in the previous period are not reiterated. The Netherlands supplied detailed information on 20 July 2011 on the recommendations mentioned in paragraphs 4, 8 and 10.

On 9 March 2012 the Committee asked for additional information concerning the interim report of 20 July 2011. As requested, that information has been incorporated in this consolidated report.

3. Since the last report was examined the Kingdom of the Netherlands has undergone a process of constitutional restructuring. This concerned the former Netherlands Antilles, consisting of the islands of Curaçao, St Maarten, Bonaire, St Eustatius and Saba. The reforms were based on referendums and decisions by the Antillean parliamentary assembly concerning the constitutional future of the country. Except in the case of one island, the result of the consultation process was clear: the islands no longer wished to be part of the Netherlands Antilles, but nevertheless wished to retain their ties with the Kingdom.

Agreement was reached concerning the new constitutional relations within the Kingdom. It was decided that the amended Charter for the Kingdom of the Netherlands would enter into force on 10 October 2010. On that date, the Netherlands Antilles ceased to exist as a country.

Under the new structure, Curaçao and St Maarten have acquired the status of countries within the Kingdom, similar to Aruba, which has held the status of country within the Kingdom since 1986. As a result, since 10 October 2010 the Kingdom has consisted of four rather than three countries of equal status: the Netherlands, Aruba, Curaçao and St Maarten. All have a large degree of internal autonomy.

The other three islands – Bonaire, St Eustatius and Saba – opted for direct ties with the Netherlands and now constitute ‘the Netherlands in the Caribbean’. These ties took on a new legal form with the conferral of the status of public bodies within the meaning of article 134 of the Constitution. Their status is roughly equivalent to that of a municipality in the Netherlands, with some adjustments to reflect their small size, distance from the Netherlands and location in the Caribbean. Netherlands Antillean law remains largely in force, in amended form, in these public bodies. The constitutional reform brought no change (in terms of representation) in foreign relations.

The Kingdom of the Netherlands now has four constituent parts: the European part, Aruba, Curaçao and St Maarten. The islands Bonaire, St Eustatius and Saba belong to the European part. Each part is responsible for implementing the provisions of the Convention and reporting on implementation. This report covers the four constituent parts of the Kingdom of the Netherlands.

For the Bonaire, St Eustatius and Saba, the transition to the new constitutional structure which began on 10 October 2010 is still ongoing. In view of the considerable efforts required in this regard, it was agreed that not all legislative activities could be tackled. Therefore, this report contains no information concerning these parts of the Kingdom.

4. The Dutch government considers it very important for every citizen to have equal opportunities to develop and succeed. To this end, the Constitution and other Dutch legislation contain provisions aimed at safeguarding individual fundamental rights. As a democracy governed by the rule of law, the Netherlands considers discrimination and racism unacceptable. If people should however encounter situations in which their fundamental rights are infringed there are bodies they can turn to, including a nationwide network of antidiscrimination services.

The Dutch government believes strongly in the right to equal treatment. It considers this right essential not only for open social relations among the general public but also for healthy relations between the government and the public. People are asked to take responsibility to this end: they are expected to participate actively in – and contribute to – the society in which they live.

Maintaining the right balance in community relations requires the combined efforts of all members of society, together with effective spending at local level to tackle discrimination. The local authorities have an important role to play in this regard.

Part II – Responses to concluding observations of the CERD

5. In its Concluding Observations dated 25 March 2010 (CERD/C/NLD/CO/17-18), the Committee expressed its concerns and gave recommendations on a number of subjects, to be dealt with under this heading.

6. National measures to tackle discrimination, racism and xenophobia (concl. observs. 4 and 17)

Everyone in the Netherlands is protected by law from discrimination. The ban on discrimination is enshrined in article 1 of the Dutch Constitution. The government strongly rejects every form of discrimination on the grounds of race, religion, belief, sex, sexual orientation, or on any other grounds whatsoever. Discrimination is at odds with the notion of citizenship: it creates obstacles to people's involvement in society and impedes them from taking part in, and investing in, their community.

The Dutch policy aimed at combating discrimination is general in nature. If general provisions fall short, special measures are taken.

The Dutch infrastructure for combating discrimination, including bodies like the antidiscrimination services and the Equal Treatment Commission (as of October 2012 the

Netherlands Institute for Human Rights), is accessible to everyone and is equipped to deal with discrimination on any grounds.

Achievements

Policy
In 2010 a National Action Plan to combat discrimination was enacted. In 2011 new measures to further tackle discrimination were put in place.

These include:

- the establishment of easily accessible local antidiscrimination helpdesks which can assist people who feel discriminated against;
- a simple and accessible procedure for reporting incidents involving discrimination;
- a new national anti-hate crimes campaign with a dedicated website;
- uniform registration of all complaints involving discrimination;
- the Public Prosecution Service will require higher sentences in cases of criminal offences involving a discriminatory motive. The required sentencing may be increased by up to 100% in the case of crimes whose impact is particularly high;
- annual reporting to Parliament on results and developments;
- intensified education about racism and the Holocaust as a part of the school curriculum.

Antidiscrimination services
2009 saw the advent of municipal antidiscrimination services (ADVs) in the Netherlands. This means there is now a nationwide network of local and regional antidiscrimination services aimed at protecting individuals from discrimination.
The Municipal Antidiscrimination Services Act is to be evaluated in 2012. If it proves necessary, further measures will be taken to improve protection against discrimination.

Incidents reported to antidiscrimination services
The statistics for 2009 to 2011 detailing reports of discrimination to antidiscrimination bureaus and hotlines (ADBs) and to the Equal Treatment Commission (CGB) show an increase in reports of racial discrimination:

Reports of racial discrimination	**2009**	**2010**	**2011**
Incidents reported to ADB	2363	2572	2780
Requests to CGB	66	55	94
Decisions by CGB	18	29	22
Incidents reported to police	761	774	925

Since people remain hesitant about reporting discrimination and making criminal complaints, a special app has been developed to encourage more people to report incidents.

Legislation
Legislation covers a very broad range of offences involving incitement to hatred, discrimination and violence on the basis of race or ethnic origin, religion or belief, gender, sexual orientation or disability. In 2010 the Netherlands ratified the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. The Netherlands has also implemented the Council of the European Union’s Framework Decision on Racism and Xenophobia.

Hate speech
The Dutch government is of the opinion that there should always be room for public debate; the right to freedom of expression must be guaranteed. The government also believes that public debate should be free of government intervention wherever possible, and that it should not end in the criminal courts. Criminal prosecution is an *ultimum remedium*, a last resort. Yet criminal prosecution is necessary in cases of incitement to hatred, discrimination and violence. The Public Prosecution Service's policy with regard to prosecuting such crimes is described below.

Letters to Parliament
The House of Representatives is regularly updated on the progress of efforts to tackle discrimination. Examples include the government's letter of 13 September 2010 regarding the National Action Plan and its letter of 7 July 2011 regarding stricter measures to combat discrimination.

The House of Representatives further devotes a great deal of attention to freedom of expression, and to the dividing line between such freedom and actionable discrimination. The government is accountable to Parliament for its policy on investigating and prosecuting offences in this connection. See, for example, its letter to Parliament of 4 October 2010.[1]

Letters to Parliament on discrimination include preventive measures, such as policy to combat discrimination in education and on the internet, and central government support for local antidiscrimination policy.

These letters describe a range of methods for investigating and prosecuting those responsible for discrimination. It is the policy of the Public Prosecution Service to count the discriminatory aspect of an offence as an aggravating factor when deciding what sentence to require. Since 2009 the Public Prosecution Service has defined discrimination as an aggravating factor warranting a 50% increase in the required sentence. Previously this figure was 25%. As of May 2011, a further aggravating factor has been incorporated for such offences, whereby a 100% increase in sentence may be required if an offence involving a discriminatory element has a particularly high impact.

From the autumn of 2012 onwards, the government will report on progress in this area in an annual letter to Parliament on discrimination. The government would again note that the Dutch approach to discrimination is one that consists of general policy measures.

Monitoring discrimination
The Dutch government believes it is essential to have a good information system to help keep track of developments in discrimination. Periodic 'monitors' are published, on racial and other kinds of discrimination in broad terms, as well as on more specific subjects. The Dutch government has recently invested in upgrading its information system.

7. Civic integration and general integration policy (concl. observ. 4, 5 and 6)

The first Rutte government's coalition agreement put much greater emphasis on people's own responsibility, based on the premise that this enhances social engagement. In accordance with this policy principle, government funding of civic integration has been abolished as per 1 January 2013. Under an amendment to the Civic Integration Act, adopted on 11 September 2012, people will be required to pay for civic integration courses themselves, but if they are on low incomes, they will be able to take out a loan.

[1]House of Representatives 2010-2011, 32 500 VI, no. 4.

The Civic Integration (Preparation Abroad) Act

The requirements imposed by the Civic Integration (Preparation Abroad) Act (*Wet inburgering in het buitenland*) apply to migrants coming to the Netherlands for the purpose of family formation or unification who are already obliged to obtain an authorisation for temporary stay (*machtiging tot voorlopig verblijf*, MVV) before entering the country. Nationals of EU/EEA countries are exempt from the MVV requirement, as are nationals of six countries outside Europe (Australia, Canada, Japan, New Zealand, South Korea and the United States). Given that the civic integration abroad requirements relate to the MVV procedure, it follows that they cannot be imposed on nationals of countries that are exempt from the MVV. The Dutch government monitors the implementation and results of the Civic Integration (Preparation Abroad) Act in a variety of ways. A compilation of data on the civic integration examination (number of tests taken, pass rates and number of persons admitted to the Netherlands for family reunification or formation, specified by country of origin, level of education, sex and age) is published every six months in the *Monitor Inburgeringsexamen*. An evaluation of the Act was completed in 2009. It found that successful candidates are better prepared for life in the Netherlands. The researchers found no evidence of a strong or unacceptable selection bias, nor any indication that the exam posed an impossible obstacle to entry. In the light of these results, the Dutch government continues to encourage family migrants to take and pass the civic integration abroad exam.

General services, not specific provisions

Another policy principle set out in the 2010 coalition agreement is that general services in the areas of work, education, housing and care should be effective and accessible to all. These are public services, intended in principle for the benefit of everyone living in the Netherlands. If these services do not adequately reach certain categories of people due to exceptional circumstances, measures will be taken to ensure accessibility for all. Specific provisions will not be created for specific groups.

On 16 June 2011, the government presented its plans for integration, incorporating the above-mentioned changes in integration policy and the new emphasis on promoting citizenship (see annex IV).

The second Rutte government took office on 5 November 2012.

8. Combating segregation in education (concl. observ. 7)

General information about the education system

- In the Netherlands, parents have the freedom to choose the school for their children. Most parents elect to send their children to primary schools in their neighbourhood. This means primary schools in neighbourhoods with a high proportion of ethnic-minority residents often have a high proportion of ethnic-minority pupils.

- The Dutch government gives these schools additional funding to improve the quality and results of education. To this end they may receive up to twice as much funding as other schools.

- The additional funding is aimed at increasing ethnic-minority pupils' opportunities for development, ultimately giving them fairer prospects on the labour market. In the long term, population segregation is expected to decline.

- Municipalities and schools can draw up local policy to counteract segregation in education. Legislation on education provides that municipalities and school boards must meet at least once a year to discuss achieving a more balanced distribution of disadvantaged pupils over schools.

- Pilot projects to select appropriate instruments to this end have been carried out in a number of cities. A recent evaluation showed that a number of instruments have been developed, including a joint enrolment centre (for two municipalities) which allocates pupils to schools, more information on school choice for parents, and support for parental initiatives to change the composition of a school. However, all these instruments have had little impact in quantitative terms on the composition of school populations. They are made available to municipalities and school boards by the national centre of expertise on multi-ethnic schools (*Kenniscentrum Gemengde Scholen*).

Combating discrimination through education

Education helps combat prejudice and discrimination, promotes tolerance and mutual understanding, and increases pupils' knowledge of human rights.

These are compulsory elements in several attainment targets, which define what pupils are expected to have acquired in the way of knowledge, understanding and skills by the end of primary and secondary school. An overview of these attainment targets was provided in the previous report.

Both primary and secondary schools are required by law to promote citizenship and social integration. The Ministry of Foreign Affairs commissioned the creation of a programme that schools can use to support teaching on citizenship and human rights.

The Education Inspectorate monitors whether or not schools fulfil this obligation. It has found that while schools do address citizenship, they could gain by taking a more coherent approach to this subject. In 2011, the Education Council was asked to give an advisory opinion on how schools could be supported in teaching citizenship. The Council was asked at the same time to explicitly review the position of human rights education in the curriculum. The Council recently issued its advisory opinion. The new government will formulate a policy response.

The government plans to adapt primary and secondary education attainment targets on sexuality and sexual resilience (attainment target 38 in primary education, target 43 in secondary education and target 53 in special education). Schools must address sexuality and sexual diversity because lesbians, gays, bisexuals and transgender people (LGBTs) meet with insufficient tolerance and respect in society and do not feel sufficiently safe. The aim is for the decree in which this is laid down to enter into force on 1 December 2012.

As of the 2011/2012 school year, schools are required by law to register all incidents of aggression and violence, including discrimination.

Antidiscrimination in teaching materials

Dutch schools are free to choose what teaching aids and materials to use, and can thus put their own slant on citizenship and human rights. If they wish, they can use the teaching guides on citizenship and human rights developed by the National Institute for Curriculum Development Scholen (SLO) at the government's request.

The guides give a general outline of the subject matter that can be fleshed out as desired by schools or at classroom level. Teaching objectives are defined for three domains – attitude,

skills and knowledge – based on which schools can make their own choices with regard to subject content, teaching materials and teaching methods.

The SLO has conducted a study into the extent to which human rights are addressed in current teaching materials.

In 2012 and 2013, a similar study will be carried out into teaching materials on sexual diversity, i.e. LGBTs. The purpose of this study is to gain insight into and inform schools about the teaching materials available on this subject.

9. Racism, xenophobia and political intolerance (concl. observ. 8)

Dutch society is extremely diverse. This diversity is made possible by its freedom and openness. The Dutch Constitution and the international human rights conventions provide a foundation for these freedoms and have engendered basic principles that are largely shared across society.

An open debate on social issues is essential in a democratic society, including when it comes to issues that touch on the exercise of constitutional freedoms. It goes without saying that the police and the judiciary must act when statements are made that are incompatible with legal provisions on discrimination, whether national or international.

Intimidation of political candidates is prohibited under the Criminal Code, and public discussion of political viewpoints must be possible in a democratic society. Politicians have a wide degree of latitude within the scope of public debate, and this latitude is even greater when it comes to discussion and debate within Parliament. The parameters of that latitude are ultimately defined by the judiciary.

With respect to tackling any racist or xenophobic programmes that political parties may develop, the Netherlands would emphasise that in this regard the term 'racist and xenophobic' speech entails a qualification of criminally liable acts. Such a conclusion can only be drawn after a court has determined that a political party has committed such an act. To date this has not been the case. Furthermore, in a democracy freedom of speech is a key principle, which means there can be no prior restraint. In a democracy, even political ideas we consider repugnant have to be challenged through argument. In this context the government would refer to the remarks later in this section under the heading 'Prosecution of the maker of the film *Fitna*' and the summary of the Wilders case included in annex II. Nevertheless, it is possible, under article 2:20 of the Civil Code, to have an organisation dissolved by a court on the application of the Public Prosecutor. This article states that 'a legal person whose *activities* are contrary to public policy will be prohibited and dissolved by order of the district court on the application of the Public Prosecution Service' (emphasis added). An organisation whose *objective* is contrary to public policy may also be dissolved by order of the court on the application of the Public Prosecution Service. Under article 140 of the Dutch Criminal Code, 'Any person who participates in the continuation of the activities of an organisation which has been prohibited' is committing a criminal offence. That being said, the prohibition or dissolution of a political party is a measure reserved as a last resort.

<u>Extra information</u>
Dissolution of a political party is possible only if there are grounds for the Public Prosecution Service to ask the court to dissolve it, for example if its political programme contains utterances that constitute a criminal offence. (It is not a criminal offence to merely call for a change in legislation to permit certain actions currently prohibited by law.) In a democratic

society, every person is free to found a political party, and the government has a duty not to interfere too readily with a party's programme.

The founding of a political party, like any other organisation, does not include an *ex ante* assessment of its purpose.

Scope of freedom of expression

The constitutional right to freedom of expression is not absolute. There can be a conflict with other constitutional rights. For example, the right to freedom of expression frequently conflicts with religious freedom. Freedom of expression does not protect utterances that are insulting on discriminatory grounds, or incite hatred, discrimination or propagate violence. Most statutory restrictions limiting the right to freedom of expression are laid down in the Criminal Code.

The Dutch government believes it is important to create maximum scope for extending the public debate on various issues. This is achieved through the exchange of arguments and views. The right to freedom of expression offers protection not only to ideas perceived as positive or neutral but also to those that could be seen as offensive, shocking or disturbing, particularly if they form part of the public debate and as long as they remain with the limits of the criminal law (see, for example, European Court of Human Rights (ECtHR), 7 December 1976, NJ 1978, 236; *Handyside v. United Kingdom*). No one should feel that constraints are being placed on their contribution to the public debate.

But this is not to say that freedom of expression knows no bounds. It is sometimes necessary to restrict that freedom if there are compelling societal interests at stake. Such restrictions, which may be necessitated by international obligations, are based on the principle that the boundaries of freedom of expression are breached when utterances are made that threaten our freedoms (including freedom of expression itself). Restrictions within the meaning of the Criminal Code are only considered, therefore, in cases where the wide boundaries of what is acceptable have been crossed.

The Dutch government favours a policy of restraint when it comes to investigating and prosecuting offences in this area. This means that utterances are only rarely qualified as criminal. The public debate should take place in society at large and preferably not in the courts. By their very nature, the criminal law and criminal procedure can have a restrictive effect on freedom of expression. Nevertheless, if it is established that an utterance has crossed the line of what is acceptable, the authorities will act firmly and decisively, for example in cases involving anti-Semitism, homophobia and threats of physical violence. This line is clearly visible in the cases the Public Prosecution Service has brought in recent years. In that time, only a few cases involving utterances made in the context of the public debate have resulted in criminal proceedings.

In discrimination cases that are sensitive or otherwise exceptional, the expertise of the Public Prosecution Service's National Discrimination Expertise Centre (OM-LECD) is always called upon.

The fact that there is considerable latitude where freedom of expression is concerned does not mean that utterances can never be deemed criminal offences. It is initially up to the Public Prosecution Service to assess in each specific case whether an utterance falls within the scope of the criminal law. It is ultimately up to the courts to give a final judgment in such cases.

To establish whether an utterance crosses the line in terms of the criminal law, public prosecutors and the courts make a careful assessment of the case in the light of national

statutes and Dutch and European Court for Human Rights case law. In cases involving insults directed at groups, a three-step model developed through case law is employed. The first question to be addressed is whether the utterance itself can be considered insulting within the meaning of article 137c of the Criminal Code (giving intentional public expression to views insulting to a group of persons). If this is indeed the case, it must then be examined whether the context in which the utterance was made, nullifies its insulting character. An important factor in such an assessment is whether the utterance was made in the course of participating in the public debate (including the expression of political views), or in the context of religious convictions or of artistic expression. If the insulting nature of the utterance is nullified by the context, then it may only be considered a criminal offence if it was unnecessarily hurtful. An utterance is adjudged to be unnecessarily hurtful, and thus a criminal offence, if its highly insulting character is out of all proportion to the intended goal (e.g. participating in the public debate, expressing religious convictions or artistic expression).

An utterance that constitutes a threat to a person's physical integrity constitutes a criminal offence. The criminal nature of such an utterance cannot be mitigated by citing freedom of expression or the public debate. However, the nature of the threat and the circumstances in which it was made must be such that the victim could reasonably have feared that the offender intended to carry out the crime he threatened the victim with.

Prosecution of the maker of the film *Fitna*

Geert Wilders, who produced the film *Fitna*, is the leader of the Freedom Party (*Partij voor de Vrijheid*; PVV) and a member of the House of Representatives. By judgment of 23 June 2011, Amsterdam district court acquitted him of all the charges brought against him (not only in respect of the film *Fitna*) regarding incitement of hatred and discrimination and insulting a group of persons on discriminatory grounds. The Public Prosecution Service had requested that Mr Wilders be acquitted and so did not appeal against this judgment. These criminal proceedings have therefore come to an end.

A summary of the judgment is included in the selection of judgments in discrimination cases from 2010 to 2012 (annex II).

10. Discrimination on the internet and in the media (concl. observ. 9)

The government strongly supports freedom of expression. Everyone is entitled to this right, and this certainly includes opinion makers. Freedom of expression applies as much online as anywhere else. The same legal framework applies to all forums. The criminal law plays a secondary role in this regard and only comes into play if the wide boundaries of what is acceptable are crossed. Clear criteria have been drawn up, influenced by the case law of the ECtHR and the Dutch Supreme Court, to protect the right to freedom of expression. The aim of the criteria is to guarantee that there is always scope for public debate.

The Dutch government is helping to introduce a hotline which people can contact to report discriminatory utterances posted online. and it puts its efforts to removing these discriminatory utterances. All reports will be registered.

The hotline's most important tasks besides handling reports of online discrimination will be removing discriminatory postings once reported and contributing to better enforcement of the criminal law. The hotline is an independent institution, but is fully subsidised by the Dutch government.

11. Acts of violence due to racism (concl. Observ. 10)

Since 2008 the police have been producing a national crime pattern analysis of all discrimination incidents known to the police, i.e. discrimination offences and other types of offences with a discriminatory element. The analysis draws e.g. a distinction between discrimination grounds and the acts where discrimination was involved. For example, racial discrimination, anti-Semitism and discrimination on the basis of sexual orientation are examined separately. See the annexes VI and VII (Poldis reports 2010 and 2011: National Crime Pattern Analyses of Discrimination Cases). The Public Prosecution Service also produces an annual analysis of the discrimination cases it processes. See annex I (containing statistical information on discrimination offences in 2011,[2] under ‘Prosecutions’ and ‘Disposal by the courts’) and annex III (LECD statistics (*Cijfers in Beeld 2010*)).

<u>Reporting discrimination and filing criminal complaints</u>
Members of the public must be encouraged to file criminal complaints with respect to discrimination offences and to report possible discrimination aspects of other offences. Otherwise it will not be possible to investigate and prosecute such offences adequately. To this end, the following measures have been implemented to encourage people to lodge criminal complaints with the police:

1. *Improvement and simplification of the criminal complaint process*
   The government is simplifying the process of lodging a criminal complaint and improving the quality of official police reports. Police force staff will encourage victims to file a criminal complaint instead of simply reporting an incident in case of discrimination. In addition, awareness training will be organised for police officers.

2. *Better communication about progress and disposal*
   Under the Victims’ Status (Legal Proceedings) Act, which came into force on 1 January 2011, victims are entitled to courteous treatment and a strong information position regarding their case.. This act imposes a duty to keep victims informed of how the case against the suspect/defendant is progressing. This includes notifying victims if a decision is made not to investigate or submit an official police report against a suspect.

3. *National rollout of hate crimes campaign*
   The Minister of Security and Justice is committed to expanding the options for lodging criminal complaints by rolling out a national hate crimes campaign. The police recently updated the website www.hatecrimes.nl by making it more informative and simplifying the discrimination reporting form. The form can be used to report an incident or lodge a criminal complaint. It is possible to file a report anonymously.

4. *Police registration of discrimination*
   In addition, the Police Diversity Expertise Centre (*LECD-Politie*) will continue to develop the National Crime Pattern Analysis of Discrimination Cases (Poldis).

<u>Improving police registration of discrimination</u>
After the publication of Poldis 2009, steps were taken to improve data collection in order to make the registration of discrimination more transparent and consistent. The improvement project set up by the Police Diversity Expertise Centre is currently being carried out.

<u>Using investigation tools and demanding harsher sentences</u>

[2] The figures for 2011 have not yet been analysed and as yet contain no further information about the nature of the discrimination offences. A file search is being conducted for the purpose of generating these data.

The following measures are being implemented to improve investigation and prosecution of discrimination offences:

1. Investigation: use of investigation tools
   The legislation governing the use of investigation tools (e.g. surveillance cameras) is enacted at national level and the decision on whether or not to use them is made at local level. This enables municipalities, the police and the Public Prosecution Service to give a focused response to a problem.

2. Prosecution: harsher sentences
   The Public Prosecution Service demands harsher penalties in respect of violent offences that have a discriminatory context or motive.

   See also part II under point 6 National measures.

3. Sanctions:
   Under the law, alternative sanctions may not be imposed for serious sexual and violent offences committed in a discriminatory context due to the gravity of such cases.

An overview of the numbers of reported cases, prosecutions and convictions can be found in annex I.

At the request of the Ministry of the Interior and Kingdom Relations, the Netherlands Institute for Social Research examined the registers of various organisations and institutions, such as the police, antidiscrimination bureaus, the Public Prosecution Service, the Internet Discrimination Hotline and the Centre for Information and Documentation on Israel (CIDI) with the aim of improving insight into the nature and scope of discrimination incidents reported in 2011. As a supplement to this study of reported discrimination, a survey is being conducted to determine the nature and extent of discrimination experienced by the Dutch population. This study will be completed in 2013.

12. Asylum-seeking families (concl. observ. 11)

Under Dutch policy, rejected asylum seekers and illegal aliens can be detained on grounds of public order or national security prior to their repatriation. This type of detention may only be used as a last resort and may not last longer than is strictly necessary to arrange the return of the person concerned. The maximum period for which undocumented aliens may be detained is six months, which in special circumstances may be extended to 18 months, in line with the EU Return Directive. Individuals refused entry at the border may also be detained.

Dutch immigration law also allows unaccompanied minors and families with minor children to be detained, but in such cases the principle that detention should be a last resort is applied even more strictly. Moreover, this form of detention has to be enforced in special facilities.

Families with children are detained in detention centres that have special facilities for children; unaccompanied minors can only be detained in detention centres for juveniles.

Policies have been put in place to prevent families with minor children being detained, where possible. They stipulate that such families can only be detained for relatively short periods.

If asylum seekers are refused entry at the border, they may only be detained if their application can be processed in an accelerated procedure. Moreover, detention may only be prolonged by a maximum of fourteen days after the application has been processed.

Anyone who is detained can appeal against this measure. If they fail to do so, an automatic appeal is made within 28 days. In the case of individuals who have not been refused entry at the border, detention is limited to the last phase of preparations for their return, and can last for a maximum of fourteen days. If the authorities need to supervise a family for a longer period during preparations for return, they can be rehoused in a centre where their freedom of movement is restricted, rather than being taken away. This means, for example, that they have to report to the authorities on a daily basis.

Another alternative to detaining a family with children is to detain one of the parents. (This measure is of course never applied in the case of one-parent families.) This allows the rest of the family to be placed in a centre of the type mentioned above, where freedom of movement is restricted.

Since 2011, unaccompanied minors can only be detained as a last resort, if one or more of the following circumstances applies:
- the minor is suspected of/has been convicted of a crime;
- the minor's return can be arranged within fourteen days;
- the minor has absconded before;
- the individual has been refused entry at the border, and it has not yet been established that he/she is a minor.

In other cases, unaccompanied minors will be placed in ordinary accommodation centres for unaccompanied minors, from where their return will be facilitated.

13. Discrimination and racism at work (concl. observ. 12 and 22), discrimination and marginalisation in the areas of education, health and housing (concl. observ. 14) and discrimination at fitness centres, catering establishments and places of entertainment (concl. observ. 13)

Policy

The Dutch government seeks to ensure that the needs of everyone in the Netherlands, regardless of origin, religion or belief, are addressed by mainstream policy in fields such as education, employment and health care. If certain groups or individuals start to fall behind in this respect, measures are taken to improve their situation.

On 16 February 2012 the Annual Integration Report 2011 was presented to Parliament. The report was commissioned by government and drawn up by the Netherlands Institute for Social Research, and contains an overview of important facts and trends concerning the integration of migrants of Turkish, Moroccan, Surinamese and Antillean origin (see annexes IV and V). It includes statistics on the social position of these large migrant groups in the areas of work, income, housing, education, geographical spread and crime. Integration policy is modified to take account of any shortcomings that are identified.

The government takes general measures to combat discrimination. Examples include the Municipal Antidiscrimination Services Act, an extra focus on discrimination within the police and Public Prosecution Service, and the provision in the Working Conditions Act requiring employers to pursue an active antidiscrimination policy.

Tackling discrimination is a social task that requires the continued attention of all parties involved. So besides the government, employers, employees and interest groups have an important responsibility to prevent and combat discrimination in the labour market.

Statistical information on trends in employment is contained in the annexes to this report. (See annex IV)

Awareness campaigns

The Dutch government deems it essential that public sector personnel be diverse in origin, so as to respond optimally to the needs of a pluralist society. In the light of the impending labour shortage it is crucial to make a continued effort over the next few years to effectively deploy all those who can work. Responsibility for shaping diversity policy will mainly lie with the social partners (employers' and employees' organisations). Efforts will be shaped by economic prospects. Individual employees can tackle this issue individually, but trade associations and consultancies can also play a role.

Equitable representation of ethnic minorities in elected bodies and other public sector services

In the past, many initiatives have been taken to promote the representation of ethnic minorities in public sector employment. In the long term, it is important that the diversity perspective is embedded in the public sector's regular HR policies. Central government is developing this integrated perspective with a view to its own organisation as part of a drive to improve quality in partnership with the trade unions.

One of the instruments developed in recent years to raise awareness and provide hands-on tools for public sector organisations (schools, police, central government, etc.) is a manual on successful diversity interventions. Its main purpose is to help managers in this sector to select effective diversity interventions.

Another tool is the diversity index, an interactive instrument and website (www.diversiteitsindex.nl), giving a break-down of employees of certain public bodies according to a broad scale of indicators like gender, ethnicity and age.

The social partners of local authorities have also undertaken joint action to achieve a more diverse labour force through projects that they have set up with the Municipal Work and Organisation Fund (*A+O Fonds Gemeenten*). They have provided financial support for projects recruiting new talent from different ethnic backgrounds, set up a master class on diversity and created an ambassadors' network to promote diversity amongst their employees.

Between 2004 and 2010 the National Diversity Management Network (DIV) has been providing services to the business sector, particularly small and medium-sized businesses. DIV focuses on developing methods and instruments to put diversity management into effect in the business sector.

The Netherlands believes that all the unemployed should shoulder their responsibility to participate in the labour market.

Studies, along with discrimination monitors, show that the disadvantage suffered on average by non-Western migrants on the labour market cannot solely be attributed to discrimination, being also due to factors such as lack of qualifications, insufficient command of Dutch and deficient social-normative skills.

General policy on promoting reintegration in the labour market

The government seeks to achieve this by putting in place general measures and by removing the barriers experienced by jobseekers so as to provide an efficient, personal service that is not based on a person's origins. This entails using regular measures and instruments that take account of the individual situation of each jobseeker, and applies in equal measure to all jobseekers, whatever their origin.

Local authorities play the main role in this regard, having at their disposal all manner of facilities to help jobseekers. They are supported by central government through programmes such as *Impuls Vakmanschap* ('Boosting Expertise'), designed to improve the effectiveness and efficiency of the work done within the social services and to improve the quality of service provided.

The government continues to appeal to the unemployed to take responsibility for finding jobs. They must actively take advantage of opportunities on the labour market. The tightening up of conditions and sanctions regarding the payment of benefits under the Work and Social Assistance Act will be an incentive to do so. The regional approach will remain at the heart of regular policy.

Employment agencies

It is first and foremost the task of employment agencies themselves to tackle discrimination issues. That is also very important for the image of the sector as a whole. The State Secretary for Social Affairs and Employment has held talks with the sector, which has announced its willingness to tackle the problems. The Ministry of Social Affairs and Employment (SZW) continues to monitor developments in the sector. Moreover, at the request of SZW, the Netherlands Institute for Social Research compiles the Discrimination Monitor which investigates discrimination against non-Western migrants on the labour market. The Discrimination Monitor of 2012 (the third to be published) also looks at possible discrimination by employment agencies.

Combating discrimination in the workplace

In enforcing antidiscrimination legislation, the government depends on individual reports of discrimination. People who feel discriminated against by their employer can apply to organisations set up to handle such complaints, like the antidiscrimination bureaus and the Equal Treatment Commission (now the Netherlands Institute for Human Rights). In the final instance, victims of discrimination can apply to the Dutch courts. Under the terms of safety, health and welfare legislation employers are required to pursue a policy ensuring a good working climate, including preventing and combating discrimination. The Labour Inspectorate monitors compliance and can impose fines in the event of non-compliance.

Housing

The 2011 Annual Integration Report also describes the housing situation of migrants. Migrants of non-Western origin mainly live in the Western Netherlands, especially in the big cities. Though they tend to be concentrated in certain neighbourhoods, there are scarcely any areas with enclaves of a single ethnic group.

Rented accommodation is allocated according to objective characteristics like income, household size and the length of time spent on the waiting list of persons qualifying for social housing. Ethnic origin is not a factor, so ethnic minorities have an equal chance of being allocated accommodation of this kind. Proportionally speaking, far fewer people of non-Western origin are house owners than native-born Dutch. This is partly due to differences in income and education levels. But there has been a sharp increase in house ownership in the former group since the 1990s, so they are catching up with the latter.

Certain urban areas have been designated priority neighbourhoods, and efforts are being made to provide a more varied range of housing in such neighbourhoods. This approach also benefits people of non-Western origin. This neighbourhood-focused approach also seeks to promote social cohesion, tenant participation and ways of bringing residents together.

The Dutch government actively targets discrimination in the residential sphere. Housing corporations, municipalities and others faced with this problem can for instance make use of guidelines devised to tackle antisocial behaviour and residential decay. A national platform set up to tackle antisocial behaviour in residential areas, that seeks to improve cooperation between the various parties involved in tackling this problem, has been asked by the Ministry of the Interior and Kingdom Relations to take on the additional task of curbing incidents in which people are subjected to such harassment on the grounds of their ethnicity or sexual orientation that they are forced out of their homes.

Urban Areas (Special Measures) Act ("Rotterdam Act")
Discrimination in the field of social housing is almost unknown, largely because the system of allocation is impartial. Individuals are assigned accommodation on the basis of income, household size and length of time on the waiting list, or because they have been picked first in a lottery system.

However, municipalities can make use of the Urban Areas (Special Measures) Act, also known as the 'Rotterdam Act', to prevent people without earned income from settling in certain neighbourhoods. These provisions can have a disproportionate effect on ethnic minorities, as they fall more frequently into this category than the indigenous population. Use may therefore only be made of this legislation under certain conditions. The Act can only be applied in neighbourhoods where the quality of life is under severe pressure. The municipality must have tried every other available measure, must be able to provide reasons as to why making use of the Act might remedy a particular situation and must indicate an alternative location in which people barred from the neighbourhood in question will be housed. The Minister of the Interior and Kingdom Relations must give specific consent for this legislation to be applied to a particular neighbourhood.

These are the measures taken by legislators to limit the impact on tenants as much as possible. The Council of State and Parliament support this approach.

Hospitality business and sports centres
In 2011 the Ministers of Health, Welfare and Sport and of Security and Justice presented parliament with an action plan entitled 'Towards a safer sporting environment'. The plan was subsequently implemented. Although the sports sector in the Netherlands is self-regulating, it goes without saying that action is taken against physical and verbal behaviour that conflicts with the current provisions of Dutch and international law. Alongside action by the criminal justice authorities, the action plan enables the sports sector to work to prevent undesirable behaviour (including discrimination) and tackle excesses, and to encourage positive forms of behaviour. The action plan applies to all branches and levels of sport, as well as to all age categories.

The Public Prosecution Service regards any refusal to allow Muslim women to join a gym because their religion requires them to wear headscarves as a criminal offence under the terms of article 429quater of the Criminal Code (discrimination by any person in the discharge of [his] office or in the conduct of [his] profession or business). In January 2011, the public prosecutor in Utrecht offered a national chain of gyms the option of avoiding prosecution by amending their house rules so as to remove the ban on Muslim women wearing headscarves while exercising. The gym chain complied, so that Muslim women can

now exercise with headscarves in all of its branches. All other kinds of religious headgear, such as yarmulkes and turbans, are now permitted.

On 14 June 2012 the then Minister for Immigration, Integration and Asylum Policy held talks with the hospitality business trade association, entrepreneurs, antidiscrimination bureaus and a security business. A preference emerged for an approach based on self-regulation by the hospitality business, which has a support base in this sector, being part of collaborative efforts (involving panels made up of representatives of the municipalities, police, entrepreneurs in the sector and antidiscrimination bureaus) to tackle discrimination by bars, clubs and similar venues. Voluntary 'safe night out' agreements have also been concluded. It was agreed during the talks to extend the system of voluntary agreements and panels to locations in the Netherlands where the parties in question were not yet working together to tackle discrimination. Entrepreneurs who continue to discriminate face penalties. Studies will be carried out in the near future to establish how the approach can be improved, for instance by making the measures more generally known, extending sanctions and looking for solutions to the safety problems experienced by entrepreneurs in the sector.
For more information, see a summary of a judgment of 16 February 2010 relating to a case of discrimination in the sector in question, incorporated in a selection of judgments on cases involving discrimination between 2010 and 2012 in annex II to this report.

14. Information from Aruba, Curaçao and Sint Maarten (concl. observ. 15)

Aruba

Introduction

In accordance with article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination ('the Convention'), the present consolidated report is submitted in compliance with the Guidelines for the CERD-specific document to be submitted by states parties under article 9, paragraph 1 of the Convention (CERD/C/2007/1 of 13 June 2008). This report covers the period from 2003 to September 2012 and follows on the consolidated fifteenth and sixteenth periodic report submitted to the Committee on the Elimination of Racial Discrimination ('the Committee') in October 2003 and covered the period up to June 2012.

The report should be read in conjunction with previous reports submitted by Aruba. The subjects dealt with in previous reports that remained unchanged during the period covered by this report are not addressed. The present report sets out new developments in Aruba which give effect to the implementation of the Convention. Furthermore, it addresses the Committee's recommendations with respect to the Netherlands' seventeenth and eighteenth periodic reports.

Reactivation of the National Human Rights Committee of Aruba (Concl. Obs. No. 15)

In its concluding observations and recommendations of 25 March 2010 (CERD/C/NLD/CO/17-18), the Committee invited the government (paragraph 15) to provide full information on the implementation of the Convention in Aruba.

The National Human Rights Committee of Aruba has been reactivated after several years of inactivity. The National Human Rights Committee's tasks include reviewing government policy aimed at protecting the rights enshrined in the Convention, monitoring legislative compliance with the provisions of the Convention, educating the public about Aruba's

obligations under the Convention and drafting national reports under various international human rights treaties.

Curaçao

The present information about Curaçao focuses on the 2006-2012 period and should be read in conjunction with previous periodic reports. The report adheres as closely as possible to the revised general guidelines as laid down by the Committee in 2008 (CERD/C/2007/1). It contains further answers and statistical data to questions that were raised by the Committee during its consideration of the seventeenth and eighteenth periodic reports but also touches on issues raised at the consideration of the last Universal Periodic Review of the Kingdom of the Netherlands. An update on the fourteenth periodic report is also provided in this report.

In preparing this report, the authors consulted with non-governmental organisations representing the interests of migrant groups, among others. Information received from these sources, based on their experience in practice, has been shared with relevant government bodies.

General information

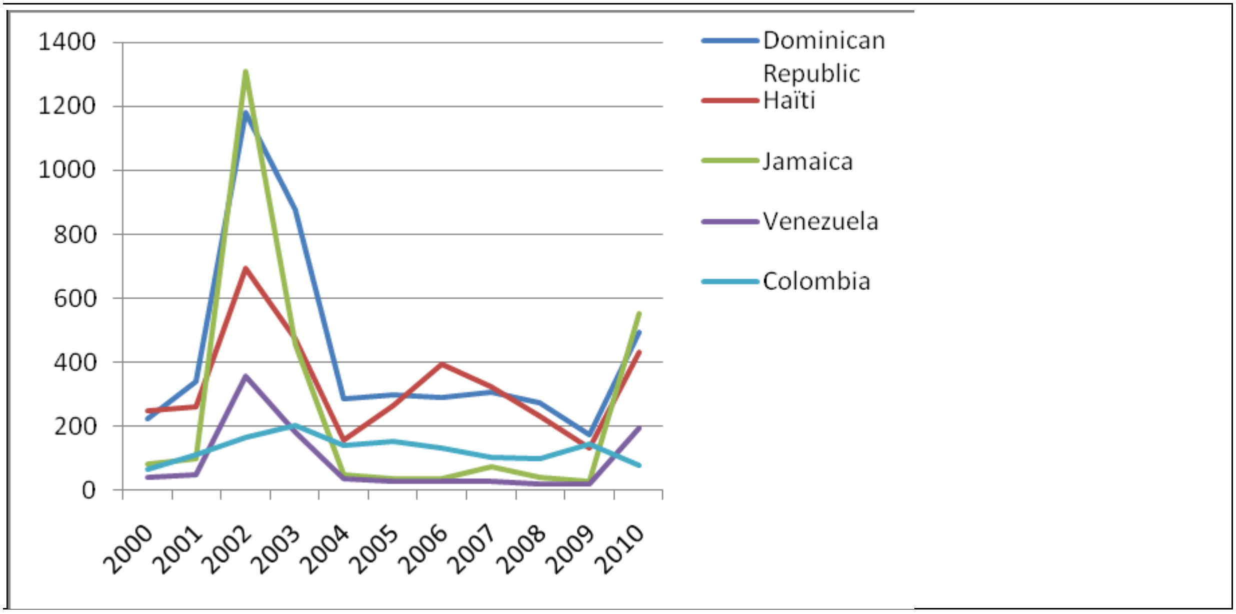
In the Caribbean region, but especially in Curaçao, a great deal more attention has been focused on the issue of immigration and migrants over the last five to ten years. An example is the special research carried out by the Central Bureau of Statistics (CBS) of Curaçao, which led to the issue of a statistical magazine entitled “Modus” in 2008. On the basis of the information obtained from the census of 2001, the magazine published an analysis of migrants’ socioeconomic position and demographic characteristics. Although the information is over ten years old, it still provides a very accurate reflection of the position of migrants in Curaçao.

The CBS found that in 2001 migrants made up 26.4% of the population. 51% were foreign nationals, the largest proportion of whom (18.7%) were originally from the Dominican Republic. 49.6% of the Antillean population are aged between 24-64; in the case of migrants this is 68.4%.

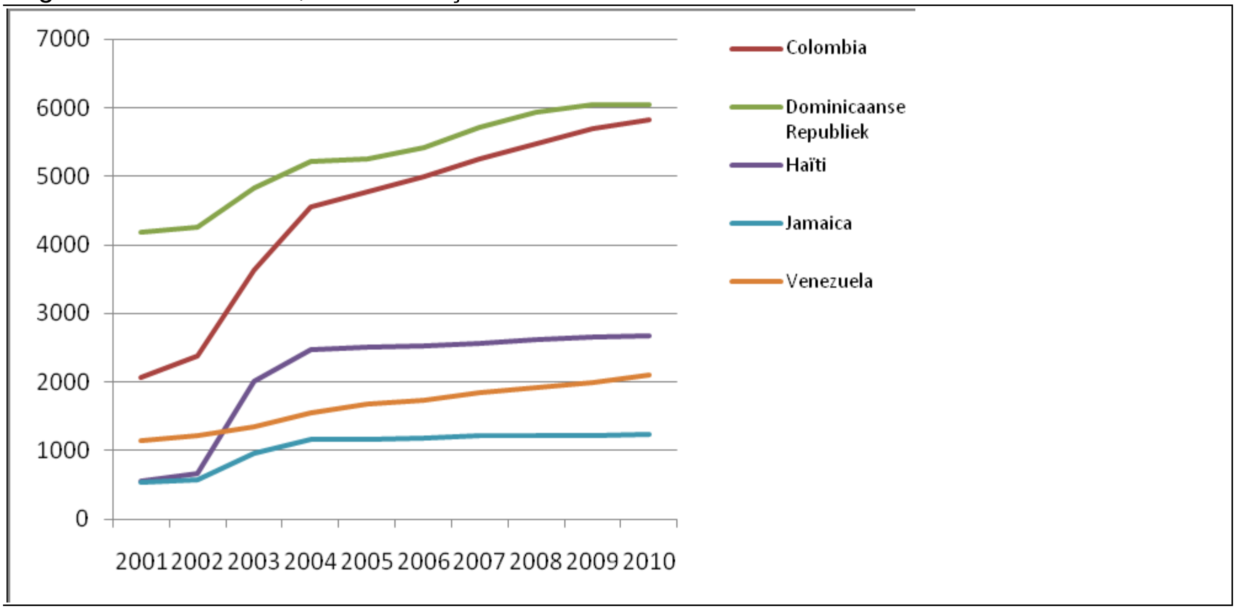
With regard to the socioeconomic position of migrants from the Caribbean region compared to the other groups, the CBS concluded, again on the basis of data from 2001, that as a group they were not highly educated, had a low level of educational participation, high labour participation, a high unemployment rate, a high percentage in work and a low income. (Source: Modus, Statistical Magazine, 2008, nr. 1, Migrants in the Netherlands Antilles.)

Migrants from Europe and North America compared to the other groups scored well in educational participation, were highly educated, had a lower level of labour participation, low percentage of unemployment, a lower percentage in work and a high average income for those in work. (Source: Modus, Statistical Magazine, 2008, nr. 1, Migrants in the Netherlands Antilles.)

Between 2000 and June 2010 the most important sending countries to Curaçao (first generation legal migrants) in the region were Colombia (4,432), Dominican Republic (3,309), Venezuela (1,271), Haiti (2,689) and Jamaica (957) (CBS Netherlands Antilles/Kranshi), as stated in a paper by J. De Bruijn and M. Groot: Risks and opportunities of recent regional migration for the SIDS, case Curaçao presented in 2011.



Year of settlement on Curaçao by country of birth (June 2010)
Source: Paper J. De Bruijn and M. Groot: Risks and opportunities of recent regional migration for the SIDS, case Curaçao 2011



Source: Paper J. De Bruijn and M. Groot: Risks and opportunities of recent regional migration for the SIDS, case Curaçao (2011) Migrant population by country of birth Curaçao, 1 January 2001-2010

The above statistics explain why from the year 2000/2001 there was a greater focus on migration and migrants by the former Netherlands Antilles, Curaçao and the Caribbean, as they clearly indicate an upward trend in migration – especially from Colombia and the Dominican Republic. The authors of the paper ascribe the peak in 2002 to a procedure whereby undocumented migrants could opt for a legal residence permit (Lei di Gracia), and to a similar procedure (Brooks Tower agreement) established in 2009.

For information regarding St. Maarten: see part III.

15. International treaties (concl. observ. 16 and 20)

Aruba

Although the Committee has encouraged the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (paragraph 16), after careful consideration, Aruba has decided not to accede to this convention on the same grounds as those stated by the Netherlands during the Universal Periodic Review in 2012 (A/HRC/WG.6/13/NLD/1).

Aruba, like the Netherlands, objects to the section in the aforementioned convention stating that social provisions should be equally accessible to migrants who are not lawfully present within the territory of the country of destination and/or are unlawfully employed there, even though such persons pay neither taxes nor the contributions used to fund these services because their stay is unlawful. Aruba takes the view that persons who are unlawfully resident and/or employed in the country should not in principle be granted the same socioeconomic rights in Aruba as those who are lawfully resident and/or employed there. Exceptions are made for the education of children who are of compulsory school age, assistance in medical emergencies and legal assistance.

The Netherlands

The Kingdom of the Netherlands has recently ratified a number of UN Human Rights conventions:

The International Convention for the Protection of All Persons from Enforced Disappearance was ratified on 23 March 2011.

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified on 28 September 2010.

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was ratified on 24 September 2009.

Regarding the UN Convention on the Rights of Persons with Disabilities, the Netherlands is currently preparing a bill for parliamentary approval. Preparations are also being made for the optional protocol to be signed.

The Netherlands will not accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) owing to its provisions concerning national policy on social welfare and services. The Netherlands objects to the that part of the Convention which entails that provision would be equally accessible to migrants who are not lawfully present within the territory of the country of their destination and/or are unlawfully employed there. Illegal residents pay neither taxes nor the contributions that fund such social provision, besides which they are not insured. The Netherlands takes the view that persons who are unlawfully resident and/or employed in this country should not in principle be granted the same socioeconomic rights in the Netherlands as those who are lawfully resident and/or employed there. Exceptions are made for the education of children who are of compulsory school age, assistance in acute medical emergencies, and legal aid.

16. Consultation with civil society organisations (concl. observ. 18)

The Dutch government sets great store by good contact and open communication with the various migrant communities in the Netherlands, in a bid to prevent them from becoming socially isolated. An effort is made to minimise divisions between ethnic and native-born Dutch communities. The government believes that for healthy social relations, effective dialogue needs to be established between citizens and government, as well as between different social groups. To this end, all groups need to participate actively in society, as well as to take responsibility (where appropriate) and show initiative. The government therefore seeks to stimulate a sense of civic responsibility in its citizens, including migrants, and to appeal to their ability to organise themselves.

The government continues to attach importance to good contacts with ethnic minority groups in the Netherlands. But the basic principle is that these communities must themselves take responsibility for representing their interests and communicating with national government. It was therefore decided, in the Coalition Agreement of 2010, that the National Consultation Platform on Minorities (LOM) would no longer receive public funding. Public funding for minority organizations participating in the LOM will stop on the first of January 2015.
Consultation is also used as a tool to stimulate the commitment and efforts of organisations and facilities in general regarding their accessibility for migrant participation and sensitivity in terms of the services they provide to migrants.
When preparing this report, consultation took place with NGOs working to combat racism and discrimination. They suggested input, based on their practical experience, and their suggestions have been incorporated into the report.

17. Availability and accessibility of State party's reports (concl. observ. 19)

The Netherlands
It is standard policy that all reports submitted to the UN human rights bodies are also submitted to the Dutch Parliament for information purposes. Once submitted in this manner, these reports have the status of parliamentary papers and as such are made available to the public on various websites.

Aruba
The Aruba Department of Foreign Affairs is taking the necessary steps to make the national reports readily available and accessible to the public at the time of their submission to the department's website. The department also intends to publish the Committee's Concluding Observations with respect to these reports.

18. Submission of an updated version of a Common Core Document (concl. observ. 20)

The Kingdom of the Netherlands is examining the scope for eventually submitting a Common Core Document which covers all four countries of the Kingdom in detail.

The Kingdom would however observe that the experiences of State parties that currently use a Common Core Document have not been universally positive. The Kingdom therefore intends to await the outcome of the present debate within the UN on reforming the convention committees before deciding the use of the Common Core Document.

Part III – Information relating to articles 1-7 of the Convention

Article 1

Aruba

New Criminal Code
The Criminal Code of Aruba was amended in 2012. Article 1:221 of the Criminal Code defines discrimination as follows: 'Discrimination or discriminating shall mean every form of distinction, every exclusion, restriction or preference aimed at or having the effect of nullifying or impairing the recognition, the enjoyment or the exercise, on an equal footing, of human rights or fundamental freedoms in political, economic, social, cultural or any other field of public life.'

Information on the demographic composition of the population of Aruba
According to data collected by the Central Bureau of Statistics (CBS) of Aruba in the 2010 census, there were 101,484 persons living on the island of Aruba. One-third of the inhabitants of Aruba were born elsewhere. Members of the largest migrant communities come from Colombia, the Netherlands, the Dominican Republic, Venezuela, Curaçao, Haiti, Suriname, Peru, China and the Philippines. (See Annex VIII: 'The foreign born population of Aruba' by CBS for more details.)

Curaçao

Although Curaçao has no specific policy document defining 'public life' nor a general 'antidiscrimination law', unobstructed access to the courts in Curaçao and the Ombudsman (widely known on the island) ensure redress if it is needed.

The Ombudsman has drawn up detailed standards of good governance. This makes deviations from those standards (e.g. discrimination) easy to identify. Of course, while freedom from discrimination in general is an explicit human right, it should be noted that no allegations of racial discrimination have been mentioned in the annual reports of the Ombudsman over the past five years.

The '80-20' country ordinance due to be enacted on Curaçao has received almost as much attention as the Repatriation Scheme (*Terugkeerregeling)* in the Netherlands. The issue surrounding both is whether or not they are discriminatory. The '80-20' legislation, initiated by the parliament of Curaçao, is aimed at ensuring sufficient jobs for locals. At the time of writing the government has yet to draft a final recommendation regarding this legislation.

St. Maarten

St Maarten has one of the most diverse populations in the region, comprising an estimated 80 to 104 different nationalities. Both the Constitution and the Criminal Code protect citizens from discrimination. Importance is placed on the criminalization of any form of discrimination. Article 16 of St Maarten's Constitution states that, 'everyone in St Maarten shall be treated equally in equivalent circumstances'. Discrimination on any grounds whatsoever is prohibited. Article 207 of the Criminal Code defines discrimination as follows: 'Discrimination means any distinction, exclusion, restriction or preference, which aims at or effects, that the recognition, enjoyment or exercise on an equal footing of human rights and fundamental

freedoms, political, economic, social or cultural field or in other fields of social life, is being nullified or impaired.'

Article 2

Aruba

Legal framework: Constitution and treaties
Article I.1 of the Aruban Constitution prohibits discrimination based on race, colour, descent, national origin, ethnic origin or on any other ground not explicitly mentioned in this provision. The principle of equality is also enshrined in the first article. This article provides a guide for the legislature in the law-making process and for the Aruban government. Under the Constitution the courts have the power of review. A citizen who claims that a given law is contrary to the first article of the Constitution may request the court to review the constitutionality of the law. If the law is deemed to be contrary to the Constitution the judge will declare it non-applicable in the individual case before the court.

Aruba is party to the major international human rights treaties. All such instruments have a non-discrimination provision. Under Aruban constitutional law these provisions are self-executing and directly applicable. Laws that are found to be in violation of an international treaty will be declared non-applicable by the court.

The Happy Community Conference
Aruba's many immigrants make it a highly diverse society of over 90 different nationalities (estimate). Although this has never led to any serious tensions or conflicts, government policy aims to increase civic participation by promoting a stronger sense of community in Aruba among people from different ethnic backgrounds. In December 2011 the government invited international experts to share their views on the way society functions with the Aruban public at the Happy Community Conference held at various locations on the island.

The purpose of the conference was to examine ways for Aruba to stimulate wider participation, including by minority groups, in its social and civic networks in order to generate greater productivity, health and happiness among all Aruban citizens.

The Government of Aruba intends to help promote these aims by serving as an international forum for the exchange of ideas. By hosting this conference, the government not only intends to gain greater insight into Aruba's multicultural and multiracial society, but also to start a regional dialogue on this issue, which has not been a topic of discussion for the Caribbean and Latin American region. It is an important topic, considering that, like Aruba, many islands in the Caribbean have a multicultural and multiracial society.

The initiative has now been adopted by the University of Aruba, which organised a second conference on social cohesion in 2012.

Anne Frank Statue
In June 2011 the *Fundacion Respeta Bida…Semper Corda* (the RESPECT LIFE…always remember Foundation) unveiled a statue of Anne Frank in Wilhelmina Park in Oranjestad, Aruba. The foundation aims to safeguard the rights of every citizen of Aruba, promote tolerance, solidarity, freedom and equality, and specifically fight racist, anti-Semitic and xenophobic practices. The Government of Aruba fully supports the work of this civic organisation.

Government, civic society and migrant communities

During the visit of Her Majesty Queen Beatrix to Aruba in 2011 there was a Multicultural Manifestation showcasing the different communities living on the island.

In May 2012 the Government of Aruba donated an area of long-lease land to the *Associación Amigos de Colombia (*The Association of Friends of Colombia) to build a center where the Colombian community on the island can organise cultural, educational and recreational activities for Aruban residents of Colombian descent and the wider community.

In July 2012 Plaza Juan Pablo Duarte was inaugurated in Oranjestad, Aruba. The public square is a tribute to the founding father of the Dominican Republic and symbolises the bond between Aruba and the Dominican Republic. There is a community of approximately 4,000 people of Dominican descent living in Aruba. The Government of Aruba supported the idea and cooperated with the Dominican authorities in the execution of the project.

The various migrant groups have ample access to the media. There are television programmes, radio stations and newspapers that primarily serve the migrant communities.

Many migrant communities host an annual public celebration of their national day. High-ranking officials of the Government of Aruba are always present at these occasions.

In recent years there has been a growing trend among schools to organise multicultural events where students learn to appreciate the diversity of cultural heritage in the school population and the wider community.

Curaçao

Besides guaranteeing unobstructed access to the courts, the Curaçao legal framework includes a Constitution (*Staatsregeling*) in which respect for human rights is enshrined, as well as access to the Ombudsman for redress in cases of discrimination by the government.

Curaçao's Constitution, introduced on 10 October 2010 (Official Bulletin (AB) of Curaçao 2010, no. 86) states in article 3 that all persons in Curaçao will be treated equally in equal circumstances. Discrimination on the basis of race and certain other grounds is not tolerated.

The Council of Ministers of Curaçao has approved the establishment of a Human Rights Institute in accordance with the Paris Principles, and this process has now started. A significant number of relevant governmental institutions and non-governmental organisations on Curaçao have confirmed their participation in this process. The NGOs in question include a migrants' organisation.

St. Maarten

Sensitisation to discrimination is a component of law enforcement training policy. The newly formed Justice Academy includes a sociology course that highlights issues within the community and the procedures law enforcement officers must follow when confronted with racial or other social problems. Profiling courses are also being implemented for immigration officers based on procedures to curb racial and other forms of discrimination. The former Brooks Tower Accord policy provided a grace period during which illegal residents who met certain criteria could legalise their status. Children born on the island to parents who were unlawfully resident at the time were also given an opportunity to legalise their status regardless of nationality, ethnicity or social standing.

Article 3

Aruba

Under articles 2:60 to 2:64 of Aruba's new Criminal Code discriminatory acts are prohibited and punishable by law. These provisions deal with a variety of discriminatory acts. Intentionally offending a person in public because of his or her race is prohibited. The means of offending is not relevant. Insulting speech, writing or data collected from electronic sources are also prohibited. Encouraging others to discriminate, or use violence against a specific group or against property belonging to this group is an offence. The law also prohibits the publication of material of a discriminatory nature and financially supporting activities that aim to discriminate. Perpetrators of these offences are liable to between six months and two years' imprisonment or fines ranging from the second to the fourth category.

Curaçao

The present government's policy programme places a major emphasis on upgrading the island's neighbourhoods. The *Plan Nashonal pa desaroya barrio* is being implemented for this purpose, with a view to preventing problems such as ghettoisation and segregation.

St. Maarten

Any individual who feels they are being discriminated against on the basis of race, ethnicity etc. can file a complaint with the relevant authorities, such as the police, and the case will be taken up by the public prosecutor. There are indications that housing options on the island are linked to income, rather than ethnic background, and therefore ghetto-forming is a trend that must be monitored. Because of the island's history and racial climate, there is no systematic racial and/or ethnic segregation. People may wish to live in areas where others from their country of origin reside, but due to the population density of the island this is not easily achievable and most residential areas contain a mix of ethnicities.

Statistics show that people of different races, nationalities or ethnic origin who fall within the higher income categories (NAF 4,000 and higher) have more access to affordable, good quality housing. The Ministry of Public Housing, Spatial Development, Environment and Infrastructure is designing a new housing policy, which is currently being analysed, aimed at correcting ghetto-forming by means of newly developed strategies to help people on low incomes acquire affordable housing. These measures will prevent people from becoming dependent on accommodation in shantytowns.

Article 4

Aruba

Ref. Information on article 3.

The Netherlands

In the period from 2010 to April 2012 the Dutch Public Prosecution Service instituted proceedings relating to insulting groups of persons, inciting hatred, and discrimination/violence on the grounds of race and/or religion. The prosecutions involved

extremely diverse cases, including verbal abuse directed at a police officer of Moroccan origin, the import of daggers bearing Nazi symbols and slogans, the online dissemination of racist songs and the exclusion of young people of foreign descent from a catering establishment.

Although in many cases the courts imposed penalties, defendants were also often acquitted. There were various reasons for such acquittals: for example, the court held that the utterances in question were not covered by the provisions under which defendants had been charged, or the court did not consider it had been established that it was the defendant who made the utterances in question. A selection of judgments can be found in annex II.

Curaçao

Article 1:6, paragraph 1(d) of the Criminal Code of Curaçao (which entered into force on November 15th 2011) provides for criminal jurisdiction over all persons (including foreign nationals) residing permanently in Curaçao who commit acts of a racist or xenophobic nature through computer systems or electronic networks. This is in accordance with the Additional Protocol (adopted on 28 January 2003 in Strasbourg) to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (Dutch Treaty Series 2002, no. 18 and 2004, no. 290).

Article 2:60 of the Curaçao Criminal Code makes it a criminal offence to give intentional public expression to views insulting to a group of persons on account of their religion, belief, political views, race, colour, language, national or social origin, physical, psychological or intellectual disability, sex, sexual orientation or minority status. Such an offence is punishable by a term of imprisonment not exceeding one year or a third-category fine. If a person makes an occupation or habit of committing such an offence, or if it is committed by two or more persons acting in concert, the penalty may be increased to a term of imprisonment not exceeding two years or to a fourth-category fine.

Subsequent articles of the Curaçao Criminal Code define related offences (article 2:61: incitement of hatred, discrimination or violence by means of images or data from a computerised system; article 2:62: making public an utterance or distributing an object containing an utterance which the offender knows or can reasonably be expected to know is insulting; article 2:63: participating in or furnishing money or other material support to activities aimed at discriminating against persons; article 2:64: intentionally discriminating against persons in the discharge of one’s office or in the conduct of one’s profession or business).

St. Maarten

Article 269 of the Criminal Code, which implements article 4 of the Convention, reads as follows: ‘Anyone who, in public, orally or in writing or in image, or data from automated work, deliberately insults a group of people because of their religion, belief, political opinion, race, color, language, national or social origin, or physical, psychological or mental disability or sex or heterosexual or homosexual orientation or membership of a national minority, is punished with imprisonment not exceeding one year or a fine of the third category.’

Article 5

Aruba

Compulsory Education Act
School attendance used to be voluntary, but partly in order to comply with the Convention on the Rights of the Child, compulsory education was introduced in Aruba. In December 2011, the Parliament of Aruba approved the Compulsory Education Act, which entered into force in December 2012. Compulsory education applies to all children of compulsory school age (4-17); this includes children who are unlawfully resident in Aruba. The Compulsory Education Act stipulates that children, irrespective of their legal status, must attend school. They also have the right to an education under Aruban law. The school attendance officer monitors whether children go to school. It is not the task of the school attendance officer to pass on information about undocumented children to the Immigration Service. School attendance officers attended a series of training workshops to prepare them for their role within Aruba's education system.

Prisma project
Migrant students can fall behind in school if their Dutch language skills are insufficient. The Government of Aruba developed a special programme to tackle this problem. In the early 1990s the Prisma project was launched with the aim of familiarising non-Dutch speaking foreign-born students with the Dutch language as soon as possible to enable them to follow the regular school programme. Prisma started as a pilot programme at one public primary school and was later extended to all public primary schools in Aruba. Now the Prisma project is running in all primary schools, supporting all children who need help with the Dutch language, including Aruban children.

The Multi-Lingual School Project
For the past few years the Department of Education has been working on the implementation of a multilingual system of primary education called '*Proyecto Scol Multilingual*' (PSML). Schools have been teaching in Dutch for years while only 5.8% of primary school students speak Dutch at home. The model of the PSML reflects Aruba's multicultural composition. The project includes the four languages most commonly spoken on Aruba: Papiamento, Dutch, English and Spanish. The PSML started as a pilot programme at two public kindergarten schools and will be extended to two public primary schools in August 2012. For the first time, a group of students will have the opportunity to learn to read and do arithmetic in Papiamento. It is the language that most children speak at home and will therefore be the main language of instruction up to the fourth grade.

Center for the Development of Women
In the context of implementing the Convention with respect to women, the *Centro pa Desaroyo di Hende Muher* (CEDEHM) was established by governmental decree in 2010. CEDEHM officially opened on 8 March 2011, International Women's Day, and is a government agency with its own budget. CEDEHM operates on the principle of gender equality. Its primary focus is on promoting equal rights and equal opportunities for both women and men in Aruban society. CEDEHM also tries to improve the position of women, both in the public sector and the private domain. Its underlying goal is to make groups that are in a disadvantaged position, such as minority women, divorced women and single mothers, more self-reliant. It seeks to achieve this by making them aware of their rights, and offering them guidance and support. CEDEHM also organises workshops for the empowerment of women in different districts around Aruba. Most of the women that attend these workshops and make use of the services provided by CEDEHM are women from migrant communities. CEDEHM launched a national campaign portraying women from different ethnic groups in a positive light. The campaign proclaims that 'Women of Aruba are fabulous', regardless of their racial, ethnic or national background. The purpose of the campaign is to promote a stronger sense of self-value among Aruban women. Plans are also in motion to launch a television campaign promoting the self-esteem of all women. Though it is a 'general' agency, CEDEHM plays a significant role in improving the position of women from migrant communities.

General Health Insurance

All legal residents of Aruba are entitled to public health insurance coverage, which gives access to the medical care available on the island. Despite their lack of legal residency, undocumented migrants receive medical assistance in cases of emergency.

Immigration

The Government has introduced a limited amnesty scheme for foreign nationals who are not or no longer in possession of a residence permit. Many have been working or studying in Aruba and have thus developed ties with the country. If they meet the criteria laid out in the immigration rules, they will qualify for a residence permit.

Curaçao

In general

The rules (legislation and instructions) relating to establishing or becoming the director of a company on Curaçao do not deal with discrimination. The instruction dates from November 2011 last year and the legislation from 1946 (P.B. 1946, no. 43).

The Curaçao authorities are currently working with the University of Curaçao on a study of migration and integration which focuses on various new immigrant communities (from Colombia, the Dominican Republic, Haiti, Jamaica and Venezuela) on the island. The aim is to get a better picture of how the demands on the island's social services are affected by their presence. The results will be used to make policy aimed specifically at the integration of new groups into society.

Information grouped by specific rights

Right to work

Country of birth	Number of people in employment in 2009	% of people in employment 2009
Curaçao	40,446	71.5%
Colombia	2,308	4.1%
Dominican Republic	2,093	3.7%
Haiti	1,075	1.9%
Jamaica	795	1.4%
Venezuela	815	1.4%
Subtotal (above 5 countries)	7,086	12.5%
Netherlands	3,499	6.2%
Islands of the former Netherlands Antilles	1,138	2.0%
Other	4,412	7.8%
Total	56,581	100%

Source: Central Bureau of Statistics Curaçao; Labour force study, 2009)

Right to form and join trade unions

In Curaçao every citizen, as well as documented or undocumented migrant workers, can join or form a trade union. In 2004, the trade union STK was established. Its members include legally resident migrant workers but also undocumented migrants employed on the island. It is concerned with labour abuses in general but especially with those against migrant workers. The right to join this union is not restricted to any type of contract, profession or group membership.

Right to housing

There are no restrictions on any groups or individuals with respect to renting or selling houses or other types of dwelling. Once the study described above has been finalised the government will formulate policy (beyond that described under article 3) to address the fact that migrants (legal or otherwise) tend to concentrate in certain areas according to their economic status and ethnic background. It should be noted that any person renting out a house/apartment or room is free to set the amount of rent payable.

Right to public health, medical care, social security and social services

According to health professionals and the Health Council, the quality and accessibility of health care in Curaçao is high compared with other Caribbean countries. This is widely understood on other islands in the region, and there have been reports among healthcare professionals of women with 'high-risk' pregnancies travelling to Curaçao to deliver.

Accessibility is crucial to providing the health care people need. Attendance is very high at the island's baby and toddler clinics, including by undocumented families. It is estimated that illegal migrants are a considerable burden on Curaçao's hospital (St Elisabeth Hospital, SEHOS) budget (source: J. De Bruijn and M. Groot: 'Risks and opportunities of recent regional migration for the SIDS, case Curaçao', University of Curaçao, 2011).

Those who cannot afford private health insurance are entitled to free health care. New rules stipulate that all migrant workers must have health insurance before they receive their work permits. At the time of writing, the Curaçao authorities are in the process of obtaining free health insurance cards for a small number of undocumented children who need medical attention. Although illegal migrants are detained and deported if they are discovered, undocumented children enjoy certain rights and are allowed to attend school without needing to fear they will be detained if they do so.

Right to education and training

In Curaçao, all immigrant children are allowed to attend school (see UN Convention on the Rights of the Child). Schools receive funding for every pupil, including those who are undocumented. Some schools situated in neighbourhoods with high migrant populations have many such pupils and many others have a migrant background. At a school in the Steenrijk neighbourhood of Willemstad, for example, over 80% of the pupils have a 1st or 2nd generation migrant background and do not speak Papiamentu or Dutch as their first language. The main challenges encountered however relate to the fact that some of the pupils are undocumented (source: J. De Bruijn and M. Groot, op.cit.)

Right to equal participation in cultural activities

In Curaçao, all ethnic groups have the same right to cultural expression. Many ethnic groups observe their cultural or religious traditions openly, and the general public are sometimes invited to participate in the festivities. During Carnival, one of the country's biggest cultural events, a range of different ethnic and migrant groups participate in the festivities.

St. Maarten

With its Constitution, national laws and policies, St Maarten strives to guarantee the rights of everyone. St Maarten is also bound by many human rights conventions. In order to implement the Convention properly, specific information concerning refugees must be available. Policies on asylum and refugees that comply with the European Convention on Human Rights and the United Nations Convention against Torture are in place. Where it concerns discrimination against a certain race or nationality, known practices within Immigration demonstrate that discrimination of refugees on the basis of race is not a factor in the processing of residency.

The right to inherit

Race is not an issue with respect to inheritance. Legislation governing inheritance is set out in Book 4 of the Civil Code. There are many provisions, mostly concerning the definition of family relations, but none of them mention race. The right to inherit has been extended to children born out of wedlock. The Declaration of Paternity Ordinance has been approved by the Parliament of St Maarten, and is awaiting publication. The ordinance will make it possible for a child, his or her mother or the court of guardianship to apply for the father's name to be formally established. Children born out of wedlock will have the same legal status as those born within a marriage.

The right to freedom of peaceful assembly and association

The Constitution of St Maarten protects freedom of association as well freedom of assembly and the right to demonstrate. Furthermore, St Maarten is bound by the Freedom of Association and Protection of the Right to Organize Convention.

The right to form and join trade unions

There is a National Ordinance on Collective Labour Agreements that protects the right of trade unions to protect the rights of their members. Membership of trade unions is open to all. There are no restrictions on asylum seekers, migrants, minorities or members of certain political groups.

The right to housing

Access to adequate and affordable housing is insufficient on St Maarten because the current supply does not meet demand. Moreover, the structural quality of many houses is not in keeping with the island's Building Code (1935), especially in certain neighbourhoods. This has resulted in housing of an unacceptable standard in impoverished areas where the lowest income groups tend to be located. Migrants of the Caribbean islands are quite often located in these areas with a mix of affordable housing that is both adequate and inadequate. They are predominantly of African descent. It is worth mentioning that such migrants often choose the cheapest housing alternatives for financial reasons. They often have families abroad that are dependent on remittances; for this reason they do not invest their income in adequate housing.

Affordable housing projects (since 1995) tend to be built on flat-land sites not in close proximity of areas of economic activity. This results in concentrations of dwellings occupied by people of the same social status (in terms of income). This is not in favour of a positive image for affordable housing areas. Furthermore, fast deterioration of the areas is a risk in such communities. However, it is clear that race, ethnicity and segregation are not in any way related to such deterioration.

The right to public health, medical care, social security and social services

At present, the health care system in St Maarten is fragmented and complex. Discrimination in health care is prohibited by the Constitution. There are different insurance schemes for different groups in society. In total there are five different insurance schemes:

1. SZV: Social and Health Insurance (*Sociale en ZiektekostenVerzekering*), managed in accordance with the Ordinance on Health Insurance (Official Bulletin 1966, no. 15);

2. FZOG: Health Insurance Fund for Retired Government Employees (*Fonds Ziektekosten Overheids Gepensioneerden*), managed in accordance with the Ordinance on Pensioners (Official Bulletin 75 no. 249);
3. Free nursing of (a certain category of) civil servants: Ordinance on Government Employees (Official Bulletin 1986 no. 165);
4. PP-card: (Pro Pauper) doctor card: Ordinance for the low income persons (AB 1996; nr. 17)
5. National Health Insurance: Ordinance regulating National Health Insurance.[3]
6.

Each insurance scheme provides a different healthcare package, which indicates disparities in access among the insured population. Many people fall through the cracks, remain uninsured and consequently have only limited access to healthcare services due to the complexity of the health insurance system rather than discrimination on the grounds of race or ethnicity.

The Government of Sint Maarten has a goal to restructure the health insurance system towards one National Health Insurance (NHI) providing universal coverage to all citizens. Enrolment in the NHI scheme will be obligatory for the entire population so no one will be excluded on the basis of age or pre-existing health conditions. There will be a single comprehensive basic package, which will include long-term care, and there will be an emphasis on preventive health care. In order to ensure affordability for all, the central principle of the NHI is solidarity: the enrolment of all income groups, without distinction between those who are healthy and those who have pre-existing conditions, will increase the affordability of, and therefore access to, healthcare for all citizens of St Maarten.

The social security system comprises general old age pension benefits (AOV), (employee/employer) medical coverage, financial assistance, medical assistance and legal assistance. All persons, regardless of race or ethnicity, have access to these social security provisions. Financial and medical assistance programmes (welfare) are available only to Dutch nationals and are regulated in the Ordinance of Financial and Medical Assistance.

In St Maarten, non-Dutch nationals are not eligible for welfare. This is because welfare resources are limited and because the regulations governing residence permits stipulate that non-nationals are responsible for their own financial well-being while residing on St Maarten.

The entire population of St Maarten, including migrants and Dutch nationals, is eligible for AOV, employee medical coverage and legal aid (if they meet the criteria). The criteria for these social provisions do not include nationality; this ensures that all persons, regardless of their nationality or sex, have medical coverage and AOV upon reaching the pensionable age.

The right to education and training

Compulsory Education dictates that all children between the ages of 4 and 18 are to be integrated into the education system. Whereas non-recognised schools catered to illegal immigrant groups in the past, phased implementation of Compulsory Education has resulted in increased enrolment, particularly in government schools. As enshrined in our Constitution, Dutch and English are the official languages. The language of instruction in St Maarten schools can be either English or Dutch. There are no other languages used as a language of instruction even though there are 101 nationalities with varying mother tongues in our school system. Parents have the freedom to choose if they wish to enrol their children in a Dutch or English school and admittance cannot be denied based on mother tongue.

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[3] Not yet in force.

The right of access to any place or service intended for use by the general public

The Police Corps of St Maarten verified that there are no restrictions based on race to any places or services intended for use by the general public. All facilities are open to individuals of any race/ethnicity, gender, religion etc. By all indications there have been no reports of individuals being barred from such facilities and/or institutions on the basis of race. Several government bodies adhere to the principle that anyone who experiences racial discrimination, or any other form of unfair treatment, is entitled to seek and pursue legal recourse.

Article 6

Aruba

Any person who experiences discrimination can avail himself or herself of the legal remedies provided by law.

The Netherlands

Training course on discrimination and the criminal law
The Public Prosecution Service's National Discrimination Expertise Centre (OM-LECD) has developed a training course to make their discrimination public prosecutors and portfolio managers better equipped to assess discrimination cases. Participants learn about how the relevant provisions of the Dutch Criminal Code (articles 137c to 137g and 429quater) should be applied in practice. The inaugural course was held on 17 April 2012 and will be included in the Public Prosecution Service's standard range of courses.

Guide to Right-wing Extremist Symbols
In 2008 the OM-LECD developed the Guide to Right-wing Extremist Symbols, which discusses various symbols, signs and slogans popular among right-wing extremists, the use of which may constitute a criminal offence. The guide, which is not available to the public, helps police officers and prosecutors quickly assess whether such objects and slogans constitute utterances punishable by law, including in the context of situations that may be difficult to gauge, such as extreme-right demonstrations. In June 2012, a revised edition of the guide was introduced.

Dedicated discrimination proceedings
On 22 November 2010, in Amsterdam, the Public Prosecution Service tried a number of cases involving discrimination on the same day, so called 'themed proceedings'. Among those invited to attend were representatives of antidiscrimination services, NGOs active in the field of antidiscrimination, and specialist police officers and police trainees. All the cases resulted in convictions and the 'themed' proceedings attracted widespread media attention. Concurrent discrimination 'themed' proceedings like these will be organised regularly in the future.

Registration of offences involving discrimination
Specific discrimination offences (see articles 137c to 137g and 429quater of the Criminal Code) are currently registered in the Public Prosecution Service's annual statistical report. It is not yet possible in the Service's registration system to filter for other offences involving a discriminatory element (e.g. assault on an individual because he is recognisably a Jew). A new system, which is currently being rolled out in phases, will allow such offences to be registered.

Discrimination Instructions
The validity of the Discrimination Instructions that date from 2007 has been extended to the end of 2013. In 2012, the OM-LECD will conduct an evaluation of the Instructions to establish whether improvements in certain areas are necessary and feasible.

The Discrimination Instructions include the following obligations:
- Every regional public prosecutor's office must have one public prosecutor specialising in discrimination cases. Every police force must appoint a discrimination portfolio manager and a point of contact for discrimination matters.

- All reports of and criminal complaints about discrimination will be registered by the police and processed in the framework of a case review. This review is discussed in regional consultations on discrimination between the regional public prosecutor for discrimination cases, the police and the local antidiscrimination service. The consultations are mainly aimed at encouraging the proper disposal of discrimination cases and monitoring their progress.

- If a criminal complaint about discrimination is made, the police must always initiate an investigation if possible. As a main rule, in cases involving violations of the discrimination provisions of the Criminal Code, criminal charges are always brought if the case can be proved and the suspect is criminally liable. The advance assumption should be that the case can be prosecuted, and in principle a notice of summons should always be issued.

- Society's total repudiation of discrimination should be clearly reflected both in the severity of the sentence and in the tone of the public prosecutor's requisitory speech. Requested sentences should be raised by 50% (or 100% for offences with an especially high impact) in cases involving offences with a discriminatory element. This discriminatory element should be emphasised in the public prosecutor's speech.

Article 7

Aruba

Human rights in police training
In implementation of article 7 of the Convention, the Government of Aruba has ensured that law enforcement officials receive training on the protection of human rights. The significance of human rights in the work of the Aruban police force is a subject that is specifically covered during the training for cadets at the Police Training Institute (*Politie Opleiding Instituut Korps Politie Aruba*). The aim is to have law enforcement officers who are properly prepared to work in a multi-ethnic society and to embed a standard of conduct that police officers must observe when performing their duties with professionalism and sensitivity to multiculturalism.

Promoting understanding, tolerance and friendship among nations and racial or ethnic groups
See section on Anne Frank monument above (art. 2 CERD).

The intention is for schools to incorporate this message of tolerance into their curriculum, and a visit to the statue would be an appropriate part of this. The Anne Frank House in the Netherlands will be helping schools in Aruba to develop teaching materials.

St. Maarten

The implementation of Foundation Based Education (FBE) involved a complete restructuring of the primary education system. One of the aspects of the FBE is the introduction of the native languages of the majority of the population as the languages of instruction. In St Maarten this is English. In accordance with the Constitution, the Dutch language is also part of the curriculum. Another objective of FBE is to provide specific information in the most prevalent foreign languages. Therefore, information on the FBE system is provided for parents in English, Dutch, Spanish and Haitian Creole.

Part of the (FBE) core curriculum is the introduction of a subject entitled “Philosophy of Life” and the introduction of a social studies textbook that promotes a sense of national unity, globalism, tolerance etc. Also one of the eight education areas in the primary education cycle is the general forming of the student. Key targets in the primary education curriculum include love, peace and nonviolence. Pupils are taught to understand and show respect for cultures, customs and rituals, and recognise and value their responsibility in relation to human rights.

Annex I Cases reported to the police

The Netherlands

Reported cases

The number of discrimination incidents reported to antidiscrimination bureaus and online is greater than the number reported to the police for criminal investigation and the number referred to the Public Prosecution Service for prosecution. Over the next year, all figures on reports and criminal complaints will be collected and presented in a uniform manner, so that trends and developments can be assessed more effectively.

Figures for police investigations show that an increasing number of cases are being investigated. Most concern discrimination on the grounds of origin or ethnicity (41%) or sexual orientation (26%). Religion is a ground for discrimination in around four per cent of cases.

Police

Grounds	2008		2009		2010	
	n	%	n	%	N	%
Sexual orientation	380	15,7	428	18,7	660	24,8
Origin/ethnicity	898	37,1	762	33,2	774	29,1
Anti-Semitism	141	5,8	209	9,1	286	10,8
Religion/belief	184	7,6	118	5,2	108	4,1
Sex/gender	9	0,4	10	0,4	17	0,6
Political views	85	3,5	113	4,9	139	5,2
Disability	0	0	5	0,2	7	0,3
Other grounds*	723	29,9	649	28,3	668	25,1
TOTAAL	2420	100	2294	100	2659	100

*	Most cases in this category involved graffiti

Prosecutions[4]

The table below gives an overview of discrimination offences.[5] Each instance of a charge brought under the discrimination provisions of the Criminal Code (articles 137c to 137g and 429quater) is counted as a discrimination offence. The number of discrimination offences does not correspond to the number of cases, since a single case may involve numerous discrimination offences. After all, a single suspect may be responsible for multiple offences of this kind that must be counted separately.[6] There may also be a combination of discrimination offences and other offences in a single case.

[4] Figures relate to 2011 discrimination offences. Source: LECD-OM.
[5] A discrimination offence is an offence defined in articles 137c to 137g and 429quater of the Criminal Code.
[6] For example when a case involves utterances insulting to a group of persons (article 137c) and utterances that incite hatred of or discrimination against other persons (article 137d).

Reports per article	2007	2008	2009	2010	2011
137c	166	168	119	126	116
137d	27	24	26	22	23
137e	7	19	8	11	19
137f	0	1	0	0	0
137g	16	15	7	8	7
429quater	0	5	0	3	4
Total	216	232	160	170	169

2007	2008	2009	2010	2011
77%	72%	74%	74%	69%
13%	10%	16%	13%	14%
3%	8%	5%	6%	11%
0%	0%	0%	0%	0%
7%	6%	4%	5%	4%
0%	2%	0%	2%	2%
100%	100%	100%	100%	100%

Disposal by OM per article	2007	2008	2009	2010	2011
137c	172	217	148	125	134
137d	18	34	24	21	13
137e	8	23	13	12	13
137f	0	0	1	0	0
137g	8	18	6	9	8
429quater	1	0	4	4	4
Total	207	292	196	171	172

2007	2008	2009	2010	2011
83%	74%	76%	73%	78%
9%	12%	12%	12%	8%
4%	8%	7%	7%	8%
0%	0%	1%	0%	0%
4%	6%	3%	5%	5%
0%	0%	2%	2%	2%
100%	100%	100%	100%	100%

Disposal by OM	2007	2008	2009	2010	2011
Writs of summons	140	173	137	121	89
Settlement penalty	29	48	20	17	14
Conditional decision not to prosecute	4	3	3	1	10
Decision not to prosecute	28	67	34	31	52
Total	201	291	194	170	165*

2007	2008	2009	2010	2011
70%	59%	71%	71%	54%
14%	16%	10%	10%	8%
2%	1%	2%	1%	6%
14%	23%	18%	18%	32%
100 %	100 %	100 %	100 %	100 %

* Other disposals in 2011:

- Proceedings joined: 1
- On-the-spot penalties: 4
- Unknown: 2
- Total: 172

Unlike the tables above, the table below lists cases rather than offences, since court judgments relate to complete cases and not just individual offences. It should also be noted that the cases listed below may have also involved other offences entirely separate from the discrimination offence in question. As a consequence, the court’s decisions regarding the various charges may have differed.

Disposal by the courts	2007	2008	2009	2010	2011
Conviction	89	114	135	90	57
Acquittal	13	27	16	21	22
Summons invalid	1	0	2	1	0
OM’s case inadmissible	0	0	1	0	1
Acquittal on a point of law	0	0	0	0	2
Conviction without imposition of a penalty	1	0	0	5	1
Referral to another body	1	0	0	0	0
Unknown	2	12	7	3	0
Total	107	153	161	120	83*

2007	2008	2009	2010	2011
83%	75%	84%	75%	69%
12%	18%	10%	18%	27%
1%	0%	1%	1%	0%
0%	0%	1%	0%	1%
0%	0%	0%	0%	2%
1%	0%	0%	4%	1%
1%	0%	0%	0%	0%
2%	8%	4%	3%	0%
100%	100%	100%	100%	100%

*A possible reason for the relatively low number of cases disposed of by the courts in 2011 could be the lower number of discrimination offences in 2009, 2010 and 2011 compared with the years preceding this period.

Annex II Summary of judgments 2010-2012

The Netherlands

Selected judgments in discrimination cases (2010-2012)

- On 29 May 2012 the Supreme Court overturned a decision by Arnhem court of appeal,[7] which had dismissed an application for daggers bearing Nazi symbols to be withdrawn from circulation. The defendant had imported a large number of Nazi daggers, which displayed swastikas, SS symbols and Third Reich slogans. He said he had planned to sell them. It had been decided not to prosecute the defendant but the Public Prosecution Service applied to have the daggers withdrawn from circulation. The Supreme Court recalled that the symbols on the daggers were intended to propagate National Socialist ideology. Arnhem court of appeal is to give a new decision on withdrawing the daggers from circulation.

- On 10 May 2012 The Hague court of appeal acquitted a defendant of joint perpetration of insulting a group of persons. The appeal court held that the utterances cited in the charges were insulting to Jews: 'Jewish rats'; 'It's a good thing that Hitler killed all the Jews' and 'It's a good thing he put the Jews in a concentration camp, because they're not the real Jews'. The principal defendant displayed these utterances on a board and spoke out those words. The principal defendant was convicted by Rotterdam district court; this conviction is final. It was very doubtful whether the co-defendant on trial in this case understood what the principal defendant was doing since the co-defendant is profoundly deaf and his reading skills are poor.[8] The district court therefore found that in his case criminal intent could not be proved with respect to joint perpetration of insulting a group of persons.

- On 27 March 2012 the Supreme Court upheld a conviction for distributing a cartoon.[9] The conviction is therefore final. On 19 August 2010 Arnhem court of appeal had convicted an organisation (which had earlier been acquitted by the district court) of posting an anti-Semitic cartoon on its website.[10] The cartoon depicted two Jews examining bodies in Auschwitz. One says: 'I don't think they are Jews.' The other replies: 'We have to get to the 6,000,000 somehow.' The organisation was sentenced to a fine of €2,500, of which €1,500 was suspended. The chairman of the organisation was also prosecuted, but Arnhem court of appeal held that the Public Prosecution Service had led him to believe that he would not be prosecuted, and declared the prosecution's case inadmissible.[11]

- On 9 February 2012 Amsterdam court of appeal acquitted a man of inciting hatred and inciting discrimination. He was however convicted of insulting Surinamese and Antillean people as a group. He had shouted: 'I have nothing at all to do with all these niggers here. These niggers murdered and raped my family. So I don't need to pay any attention to all these niggers here.' And 'I have nothing at all to do with all these corrupt niggers here. All these niggers should go back to their own country.' And 'All these corrupt niggers– including that Sweet – who are partying here should all go back to their own country. I don't pay any attention to these Surinamese and Antilleans. All these niggers should be put down.' The appeal court ruled that these utterances were made within a relatively short space of time and stemmed from frustration, so that it could not be satisfactorily established that the defendant's intent was to incite discrimination. An order for 50 hours' community service, 20 hours of which were suspended, was imposed for insulting a group of persons.[12]

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[7] Supreme Court 29 May 2012, LJN (national case-law database no.): BP0478.
[8] The Hague court of appeal 10 May 2012, LJN: BW6625.
[9] Supreme Court 27 March 2012, LJN: BV5623.
[10] Arnhem court of appeal 19 August 2010, LJN: BN4204.
[11] Arnhem court of appeal 19 August 2010, LJN: BN4206.
[12] Amsterdam court of appeal 9 February 2012, LJN: BV3500.

- On 19 January 2012 a defendant was convicted of sending dozens of offensive emails to a large number of individuals and media outlets. Many of the emails contained insulting utterances about Jews, such as the one which said: ‘Deprogram yourself and stop buying from Jews, spit on them and let them know they disgust us.’ At the hearing the defendant relied on the claim that he had sent the emails as a way of triggering a public debate. However, the district court held that the defendant’s utterances were in no way a contribution to any public debate and certainly did not serve any such discourse. Even if the court were to believe the defendant’s statement that his aim was to trigger public and political debate, the language, expressions and tone of the emails were such that the court was of the opinion that no connection with this aim could reasonably be established.[13] The district court imposed an order for 60 hours’ community service and a suspended prison sentence of two weeks. However, the defendant was acquitted of making a habit of discriminatory utterances. Both the defendant and the Public Prosecution Service lodged an appeal.

- On 8 December 2011 Amsterdam district court imposed a 40-hour community service order on a defendant who had written articles on his website containing insulting utterances such as: ‘why weren’t all the Jews gassed during the war when it was still possible’, ‘it makes you want to see the Holocaust done all over again’ and ‘maybe Jews should have a star pinned on them again to remind them of how unpleasant it is to be repudiated’. The defendant was acquitted in respect of a number of other utterances, which the district court held were intended to be satirical. Both the defendant and the Public Prosecution Service lodged an appeal.[14]

- On 29 November 2011 the Supreme Court upheld the acquittal of a columnist who had made insulting statements about Jews in one of his columns. For example, he had written: ‘Since the Nazi era it has not been cool to say negative things about Jews but sometimes I can really see how things got to that point in 1937.’ This statement was held to be insulting to Jews but when considered in its context and the content of the column as a whole it was not held to constitute a criminal offence.[15] This judgment rendered the defendant’s acquittal final.

- On 9 November 2011 The Hague district court acquitted a defendant of sending a large number of discriminatory utterances about Muslims by email to a large group of recipients. The court held that in most cases it had not been satisfactorily proved that the defendant had sent the emails. Where the court found that it had been proved that the defendant was responsible for sending the utterances, it held that they did not constitute a criminal offence. This acquittal is now final.

- On 20 October 2011 The Hague district court convicted a defendant of distributing music that was insulting and intended to incite hatred, by means of a peer-to-peer network which enables people to download each other’s music files. The music in question consisted of a large number of racist songs with titles such as ‘Nigger out’ and ‘Ruhm und Ehre’, in which ‘Sieg Heil’ and other slogans were chanted. The lyrics were aimed at Jews, people of colour, non-Western immigrants and gypsies. Many of the songs propagated National Socialist ideology. The district court imposed an order for 60 hours’ community service.

- On 20 September 2011 Amsterdam court of appeal ruled that a defendant had been proved to have incited violence against the property of others (namely a church) on account of their religion. The defendant had displayed various images in the window of his home,

[13] Amsterdam district court 19 January 2012, LJN: BV1327.
[14] Amsterdam district court 8 December 2011, LJN: BU7305.
[15] Supreme Court 29 November 2011, LJN: BQ6731.

including a poster depicting a church surrounded by flames and bearing the words 'burn the'. There was also a picture of a Christian cross with an 'equals' sign followed by a swastika. Two of the images consisted of the 'no' symbol superimposed on a Christian cross, with the caption 'Bad Religion'.[16] The defendant was sentenced to a fine of €250 (suspended).

- On 23 June 2011 Amsterdam district court acquitted MP Geert Wilders, leader of the Freedom Party, of insulting a group of persons, namely Muslims, and of inciting hatred of and discrimination against Muslims, Moroccans and non-Western immigrants. The public prosecutor took the view that the defendant's utterances did not constitute a criminal offence and recommended acquittal. The defendant had been charged with a large number of utterances he had made in interviews, columns, articles and the film *Fitna*. The district court concluded that most of them were critical of Islam as a religion and were not aimed at Muslims as such, and were therefore not covered by the Criminal Code's provisions on discrimination. In the case of certain utterances, which perhaps could have been regarded as inciting hatred, the district court held that they had been made in the context of the public debate and that they therefore did not constitute criminal offences.[17] The acquittal is final.

- On 10 June 2011, The Hague court of appeal sentenced a man to a fine of €250 for insulting a group of persons, namely Jews, Muslims and people of colour. He was on his way to a right-wing extremist party and his jacket bore a number of discriminatory images.[18] He had previously been acquitted by The Hague court of appeal but the acquittal was overturned by the Supreme Court. The conviction is final.

- On 12 May 2011 The Hague district court convicted one defendant and acquitted another of publishing discriminatory statements on the right-wing extremist website Holland Hardcore.[19] The first defendant was acquitted because it had not been established that he, as the moderator, had seen the discriminatory statements on the website. The second defendant was found guilty of insulting and inciting hatred of various groups on account of their race and/or belief. His statements were aimed at people of Moroccan and Antillean descent, Jews, Muslims, LGBTs, gypsies, people of colour and foreigners in general. The defendant personally posted discriminatory utterances on the website, allowed discriminatory utterances by others to remain on the website and had in his possession a CD containing racist lyrics with the intention of distributing it. The court imposed a 36-hour community service order.

- On 11 January 2011 Utrecht district court convicted a defendant of insulting Jews as a group and of inciting hatred of and discrimination against Jews, on account of anti-Semitic statements he made while being filmed by a news website's camera. He said: 'The Jews must be wiped out', 'I want to stick them right now, I've got a scriber', 'I hate Israeli Jews', and 'When I see a Jew with a skullcap I want to stick him right away'. The defendant was also convicted of theft. The court imposed an order for 80 hours of community service, of which 40 hours were suspended, and ordered the defendant to perform 16 of the hours at the Anne Frank House in Amsterdam.

- On 23 November 2010 the Supreme Court overturned the acquittal of a defendant charged with possessing T-shirts bearing the words 'Combat 18' and 'Whatever it takes' with the intention of distributing them.[20] Combat 18 is a violent neo-Nazi organisation. The figure 18 refers to the first and eighth letters of the alphabet: A and H, Adolf Hitler's initials. The Hague court of appeal is to give judgment again in this case.

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[16] Amsterdam court of appeal 20 September 2011, case no. 21-001720-10.
[17] Amsterdam district court 23 June 2011, LJN: BQ9001.
[18] The Hague court of appeal 10 June 2011, LJN: BR6028.
[19] The Hague district court 12 May 2011, LJN: BQ4301, BQ4468.
[20] Supreme Court 23 November 2010, LJN: BM9135.

- On 22 November 2010 the Public Prosecution Service brought a number of cases involving charges of discrimination before Amsterdam district court. During this theme session the court heard the facts of three cases involving racial discrimination.[21] They ranged from the chanting of anti-Semitic slogans at football matches to a confrontation in which a member of the public verbally abused a police officer on account of his ethnicity.

The first case concerned a car driver who verbally abused and spat at a woman traffic warden of colour, when she was about to fine him because he had not bought a parking ticket. He shouted at her, using offensive expressions relating to her colour, for example: 'Filthy fucking black monkey' and 'Stinking whore, go pick bananas you monkey'. Then he spat at her. In line with the Public Prosecution Service's required sanction, the district court sentenced the defendant to a fine of €550.[22]

The second case was the trial of three football supporters, who had violently attacked riot squad officers before a football match. One of the defendants was also convicted of giving intentional public expression to views insulting to Jews (article 137c of the Criminal Code) by chanting with others 'Hamas, Hamas, Jews to the gas'. The court imposed a suspended sentence of one month's imprisonment on all three, with an operational period of two years, during which time a stadium banning order was also imposed. The defendants were also subjected to community service orders ranging from 60 to 150 hours.[23]

The third case involved a police officer of Moroccan descent. Following a complaint about noise, the officer and a colleague went to a street in Amsterdam. After they had talked to the defendant, he said to one of the police officers in a very loud voice: 'You must be another Moroccan! You're a fucking Moroccan like them!' (looking at a man and a woman who was wearing a headscarf). The defendant also said: 'You're a fucking Moroccan. Go back to Morocco. I'm proud of being a European. You Moroccans are all the same. You Moroccans are ruining this place.' Following these utterances the defendant was arrested. He resisted and kicked at the officer. The defendant was sentenced to perform 240 hours' community service, 80 of which were suspended.[24]

- On 11 October 2010, The Hague district court sentenced three branch managers and a personnel officer of a supermarket chain to a fine of €1,250, all suspended.[25] They were charged with having in the conduct of their profession intentionally discriminated against persons of Moroccan descent on account of their race (article 137g of the Criminal Code).

The three branch managers had informed the personnel officer by email that they wanted no more job applicants of Moroccan descent. The investigation into the case revealed that for at least two weeks the personnel manager complied with the branch managers' request and sent no applicants of Moroccan descent to the branches in question. The convictions are final.

- On 11 October 2010, Amsterdam court of appeal convicted a man of posting discriminatory utterances about Muslims and immigrants on the internet.[26] The court also found that it had been proved that the defendant had made a habit of this practice. A more severe maximum penalty therefore applied. The defendant was sentenced to a fine of €1,000, €500 of which was suspended. He had previously been acquitted by the district court. The utterances in question were as follows:

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[21] See Part III, article 6 for further details of this court session.
[22] Amsterdam district court 6 December 2010, LJN: BO6422.
[23] Amsterdam district court 6 December 2010, LJN: BO6415: BO6508; BO6510.
[24] Amsterdam district court 6 December 2010, LJN: BO6384.
[25] The Hague district court 11 October 010, LJN: BN9971; BN9983; BO0019; BO0022.
[26] Amsterdam court of appeal 11 October 2010, LJN: BO0041

- ‘You just have to let these Barbary apes and cockroaches in’
- ‘Muslims (…) stay in the desert and shag one of your camels’
- ‘We treated them like honoured guests. At least until they started raping our women’
- ‘An invasion by over a million Barbary apes – you could call that the threat of a Third World War’
- ‘Rats who would like nothing better than to slaughter us all because we’re unclean infidel pigs’.

- On 21 September 2010 the Supreme Court upheld the conviction of a man who had displayed a swastika flag in his window.[27] The alternative sanction of 40 hours thus became final.

- On 16 February 2010, in accordance with the public prosecutor’s required sanction, Den Bosch district court sentenced a defendant, the proprietor of a bar, to 60 hours’ community service and a suspended term of imprisonment of two weeks, with an operational period of two years. In addition the court ordered her to pay damages of €250 to the injured party in the second offence.[28]

The defendant was prosecuted for discrimination on account of race in the conduct of her profession as the proprietor of the Gompie bar in Den Bosch. In two joined cases, she was charged principally with a violation of article 137g of the Criminal Code (discrimination on account of race) and alternatively with contravening article 429quater of the Criminal Code (discrimination on account of race, the minor offence version of article 137g).

The primary offence was having five young immigrants men removed from the bar and subsequently refusing to allow them to enter on several occasions. The doorman, who knew some of them from another establishment and knew that they were not troublemakers, referred them to the local antidiscrimination bureau. Four of them filed a criminal complaint of discrimination. The bar owner was also charged with having refused to sell a ticket for a carnival party in the bar to a young man of colour. The conviction is final.

- On 1 February 2010 Amsterdam district court convicted a defendant of insulting individuals, shoplifting and insulting police officers. The insults were aimed at three young men who were standing outside a synagogue in Amstelveen to provide security. As one was wearing a yarmulke, he could be identified as Jewish. The defendant shouted insults such as: ‘Fucking Jew’, ‘Fucking Jew, we’ll kill you’, and ‘Allah Akbar, we’ll come back and kill you all’. The defendant was sentenced to 80 hours’ community service and a suspended two-week term of imprisonment.

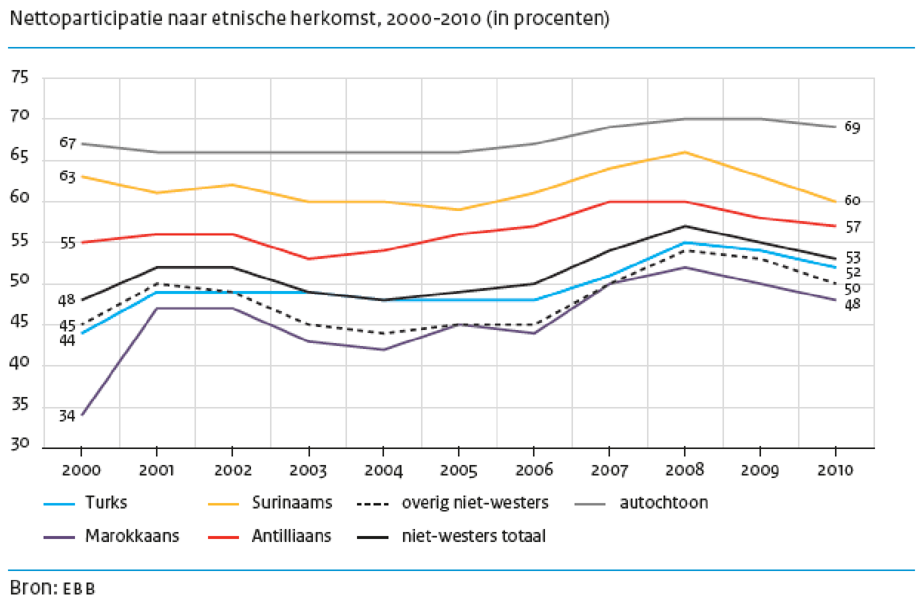
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[27] Supreme Court 21 September 2010, LJN: BM2483
[28] Den Bosch district court 16 February 2010, LJN: BL3895.

Annex IV Statistical information about employment

The Netherlands

<u>Net labour participation</u>
A marked improvement in the position of ethnic-minority workers on the labour market, both men and women, took place over an extended period of time. The economic crisis that began in 2008 has, however, made inroads into these gains. The 2011 average net labour participation of ethnic-minority workers was 67.2%, 0.1% higher than in 2010 and 3.5% higher than the year average for 2005 (63.7%), the year the previous recession bottomed out.



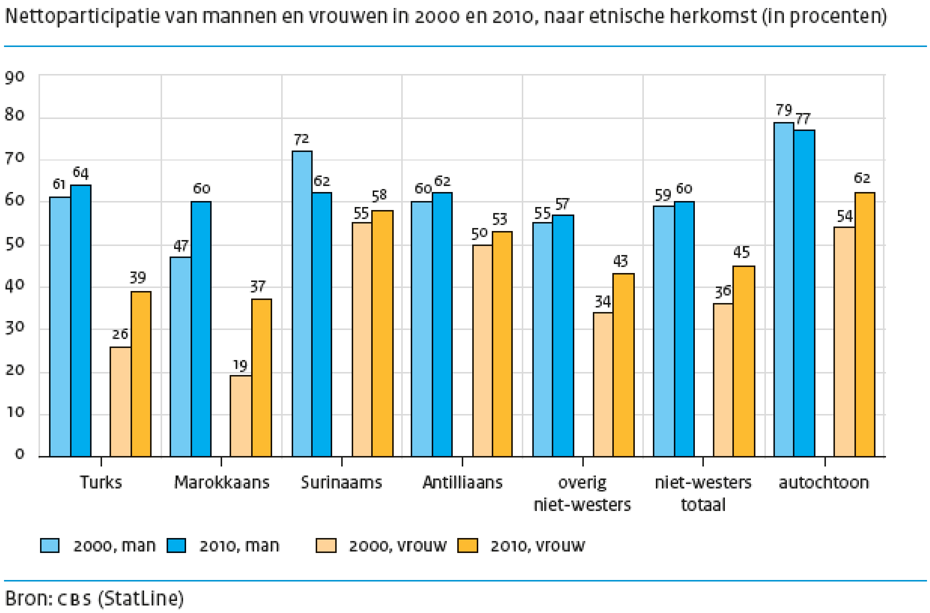
(Graph: *Jaarrapport Integratie 2011*, Netherlands Institute for Social Research)

Net labour participation by ethnic origin, 2000-2010 (in %)

Turkish	Surinamese	Other non-Western	ethnic Dutch
Moroccan	Antillean	Non-Western total	

Source: EBB

The bar chart below was taken from the 2011 annual report on integration (*Jaarrapport Integratie 2011)* published by the Netherlands Institute for Social Research. It depicts net labour participation for men and women, by ethnic origin, over a 10-year period.



Net labour participation of men and women by ethnic origin, in 2000 and 2010 (in %)

Turkish, Moroccan, Surinamese, Antillean, other non-Western, non-Western total, ethnic Dutch

2000, men
2010, men
2000, women
2010, women

Source: CBS (StatLine)